



Costs Decision

Site visit made on 5 January 2022

by E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2022

Costs application in relation to Appeal Ref: APP/C2708/W/21/3282878 Natwest, Market Place, Settle, BD24 9EF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by ARBA Group for a full award of costs against Craven District Council.
 - The appeal was against the refusal of planning permission for 'proposed change of use and rear extension, following demolition of existing rear single storey extension, to former NatWest Bank, to provide retail or café/restaurant use (A1/A3) at ground floor with 4 no. residential apartments (C3) above, and the conversion of existing outbuildings to a store'.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (the Guidance) advises that where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 3. It also states that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through unavoidable delay.
 4. Examples of behaviour which may lead to a substantive award of costs against the local planning authority are set out in the Guidance. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 5. As set out in my Appeal Decision, the site has some planning history and the appeal proposal was submitted following the refusal of a previous scheme. This included the conversion of the building and rear extension (as in the case of the appeal proposal) along with a detached cottage in the garden of the appeal building. The planning application for that scheme was refused on the basis of the harm that would arise from the detached cottage only, and the accompanying application for listed building consent was granted.
-

6. The appeal scheme omits the cottage and was supported by officers but refused by planning committee. I am also aware that despite giving consent for the previous application for listed building consent, the Council also refused a further application for listed building consent which the appellant submitted to accompany the appeal scheme. This was for the same works that had already been previously permitted. Whilst I am unaware of the reasons for the submission of the second application for listed building consent in these circumstances, I am in any event mindful that the refusal of that consent is not the subject of an appeal which is before me. Any unreasonable behaviour alleged in this regard does not fall for me to be considered under this costs application.
7. Nevertheless, I am conscious that the Council had already granted listed building consent for the works subject of this planning appeal. The appellant indicates that Members were aware of the situation in refusing the appeal scheme. The appellant also advises that conditions 3 and 6 of that consent have since been discharged such that the consent can be lawfully implemented. The Council does not dispute these matters.
8. The Guidance is clear that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. For example by unreasonably refusing or failing to determine applications or by unreasonably defending appeals. An example of unreasonable behaviour is not determining similar cases in a consistent manner. An additional example is failing to grant a further permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.
9. The first reason for refusal of the appeal scheme relates to the impact of the proposal on heritage assets. This is despite the extant listed building consent for the same works having already been granted and the reason for refusal of the previous application relating solely to the impact of the previously proposed detached cottage only (and not the change of use or the extension). The Council has not made me aware of any material change of circumstances in the period between these decisions. Whilst I am mindful that the proposal before me would require planning permission as well as listed building consent, it is not clear why the Council has deviated from its previous position with regard to the works to the listed building. As such, it has not determined similar cases in a consistent manner.
10. Additionally, aside from the basic outline details included in the first reason for refusal on the decision notice which refers only to the proposal's adverse and unacceptable impact on the listed building and the conservation area, no further information as to the particular nature of the Council's concerns with regard to heritage assets has been provided as part of the appeal.
11. A further example of unreasonable behaviour set out in the Guidance is the failure to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. As set out in my Appeal Decision, I have considered the heritage merits of the case based on the points raised by third parties and my own observations. In doing so, I have found that the public benefits of the proposal are sufficient to outweigh the less than substantial harm to the

- designated heritage assets that I have identified, and that accordingly the proposal is acceptable in terms of its effect on heritage assets.
12. As such, I find that this reason for refusal has not been substantiated at appeal and is not supported by any persuasive evidence. Thus, I consider that the Council's reliance on this matter is inaccurate and does not stand up to scrutiny.
 13. Taking these matters into account, I therefore regard the Council's behaviour in relation to the first reason for refusal to have been unreasonable.
 14. The second and third reasons for refusal of the appeal scheme relate to the living conditions of neighbouring occupiers and car parking. These were not raised in relation to the previously refused scheme, and in that sense are 'new' reasons for refusal.
 15. With regard to highway safety, in the absence of a statement from the Council its concerns in relation to this reason for refusal have not been explained. The reason for refusal refers only to the scheme providing inadequate parking. This generalised assertion about the proposal's impact has no supporting analysis. Whilst I have considered the concerns raised by third parties in this regard, no explanation is given as to why members of the planning committee did not follow the professional advice of the Highway Authority or their officers.
 16. Planning authorities are not bound to accept the recommendations of their officers or technical experts, but when they do not, their reasons for doing so must be justified. As set out in my Appeal Decision, I have found that the proposal would cause no harm to highway safety and accordingly this reason for refusal has not been substantiated by evidence provided by the Council and does not stand up to scrutiny on its planning merits. This being so, I consider the Council's behaviour in relation to the third reason for refusal to also have been unreasonable.
 17. Turning to living conditions, the reason for refusal indicates that the extension would result in overlooking of the neighbouring residential property and have an adverse impact on the amenities of that property. Again the Council's concerns have not been expanded upon or further explained beyond this statement. However, a number of specific concerns in relation to the proposal and an explanation as to their particular impacts on the living conditions of neighbouring occupiers have been set out by third parties and are considered in my main Appeal Decision.
 18. On the basis of these and my own observations and despite it not being a previous reasons for refusal of the previous scheme, I have found the appeal scheme to be harmful in this regard and concluded that this harm provides compelling grounds to dismiss the appeal. This being so, despite the lack of evidence provided by the Council, I consider that the Council's fundamental concerns in terms of living conditions are well founded. Since this reason for refusal has been found to stand up to scrutiny on the planning merits of the case I consider it to be justified. Accordingly, I do not regard the Council's behaviour to be unreasonable in relation to the second reason for refusal.
 19. However, I must also consider whether the Council's unreasonable behaviour in relation to the first and third reasons for refusal has meant that the appellant has incurred any unnecessary costs or wasted expense. The appellant has had

to defend heritage and highway safety reasons for refusal at appeal, and whilst no new technical reports were commissioned to accompany the appeal, time and effort has been expended on pursuing those particular parts of the appellant's case. Accordingly I find that the appellant has incurred unnecessary expense in rebutting these unjustified reasons for refusal via the production of an appeal statement and final comments documents.

20. I have also considered a number of other points raised by the appellant. The application had to be heard twice at planning committee causing delays to the determination of the application. However, although all parties are expected to behave reasonably throughout the planning process, I am mindful that costs cannot be claimed for the period during the determination of the planning application.
21. Additionally the appellant indicates that members failed to take account of the permitted development rights under the former Use Classes Order which at the time of their decision, would have allowed the change of use of the building to an A1 retail use. I am also aware that that a certificate of lawfulness has since been granted and establishes that the building can be used for either retail or café purposes (as sought by the appeal scheme). However, the formalisation of this position post-dates the planning committee's consideration of the appeal scheme. In any event, this fallback position relates only to the change of use of the ground floor of the building, not the residential use or the extension. It remains that these elements of the proposal require planning permission and were before the Council for consideration. As such, I do not regard the Council's behaviour to have been unreasonable in this regard.
22. Finally, the appellant refers to the findings of a Local Government Association Peer Review relating to the Council's planning committee. However, the generalised conclusions of that report do not in themselves demonstrate unreasonable behaviour in this particular appeal.

Conclusion

23. Bringing matters together, whilst I have found that no harm would arise to heritage assets or highway safety, I have found the proposal to be harmful to the living conditions of the occupiers of the adjacent property. These concerns have in themselves led me to dismiss the appeal. As such, I am not persuaded that the appeal could have been avoided in its entirety, or that the Council has delayed development that should have been permitted having regard to the development plan, national policy and any other material considerations.
24. I therefore conclude that, despite the Council's unreasonable behaviour described above, the appellants' costs in mounting the appeal were not unnecessarily incurred. Consequently, the application for a full award of costs is refused. However, I find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated in relation to heritage assets and car parking matters, and on this basis a partial award of costs is justified.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

Craven District Council shall pay to ARBA Group, the costs of the appeal proceedings described in the heading of this decision (limited to those costs incurred in defending reasons for refusal 1 and 3) such costs to be assessed in the Senior Courts Costs Office if not agreed.

26. The applicant is now invited to submit to Craven District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

E Worthington

INSPECTOR