
Costs Decisions

Hearing held on 22 March 2022

Site visit made on 22 March 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Application A: Costs application in relation to Appeal Ref:

APP/G3110/W/21/3280930

**Former St Mary and St John CE Primary School, Hertford Street, Oxford
OX4 3AJ**

- 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 Oxford City Council for a partial award of costs against Mr John Perkins, Trustees of Magdalen Road Church.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of part of the Irving Building to a mixed Class B1/D1 use, erection of a new Class D1 community building and erection of 9 residential units (3 x 3 bed, 6 x 2 bed apartments).
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Application B: Costs application in relation to Appeal Ref:

APP/G3110/W/21/3280930

**Former St Mary and St John CE Primary School, Hertford Street, Oxford
OX4 3AJ**

- 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 Mr John Perkins, Trustees of Magdalen Road Church for a full award of costs against Oxford City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of part of the Irving Building to a mixed Class B1/D1 use, erection of a new Class D1 community building and erection of 9 residential units (3 x 3 bed, 6 x 2 bed apartments).
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Decision

1. Application A for an award of costs is refused and Application B for an award of costs is refused.

Procedural Matter

2. Both cost claims were made in writing. The responses to the claims were made orally, as was the final response from each respective party. I have had regard to both the written and oral submissions in my decision. I did not accept a written transcript of the Council's response to the applicant's claim because the attempt to submit it was made after the hearing had closed.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Application A

4. The Council's claim relates to new evidence¹ that was submitted during the hearing by the appellant. The Council consider that its position has been prejudiced because it was not able to consider the evidence in advance of the hearing. The Council also points to the timing of when the document was submitted during the hearing, as it was not raised when the Inspector made his opening remarks.
5. The appeal timetable establishes clear deadlines for when documents are to be submitted. The submission of the document by the appellant does not relate to the deadlines that were set. It clearly represents late evidence. The submission of late evidence is not encouraged through the appeal process.
6. The appellant has drawn attention to that the hearing process does not provide for the submission of a written response after the Council has submitted its appeal statement. The appellant would however have been aware of that when the appeal was submitted as it has been professionally represented. Indeed, the appeal form requested that the appeal follow the hearing route. Implied criticism of the hearing process has a limited bearing because the appeal is to follow the associated timetable that is based on the Rules, regardless of what might be thought of it.
7. The process does however allow parties to present verbal evidence at the hearing by way of answering the questions that an Inspector poses. There were a number of questions that allowed the appellant to further elucidate their evidence in this regard. What is of overriding importance is that the hearing is carried out in an impartial and transparent manner. The hearing process allows for this to be achieved and it does not seek to elevate the status of any party.
8. The appellant expressed a concern that the document would have simply been returned if it had been submitted prior to the hearing. However, it would seem to me that the appellant could have more readily addressed the issue if the document had been submitted to the Council in good time prior to the hearing and then drawn my attention to it during my opening remarks. The content of the document is also not insignificant because it provides detailed information and commentary on a number of community facilities, even if the facilities themselves are referred to in the Council's appeal statement.
9. In taking these considerations together, I find that the introduction of this document does constitute unreasonable behaviour.
10. For costs to be awarded though, unnecessary and wasted expense must also be demonstrated. I accepted this document because it was of relevance to my deliberations. Hence, regardless of when it was submitted, the Council would have incurred some expense because I would have required the Council to

¹ MRC Document – local facilities within 10-15 - minute walk and D1 Losses locally

notify interested parties of it and invited the Council to respond. I therefore cannot find that such expense would have been unnecessary and wasted, notwithstanding that I appreciate that the Council clearly has experienced some expense in dealing with the document.

11. The Council also consider that the appeal taking place as a hearing has not aided the determination beyond what would have been the case if the appeal had taken place as written representations, in light of the submission of the late evidence. However, this would not have allowed me to get the answers to my questions that I needed in order to inform my decision and I am also mindful that there was significant interest in the appeal from interested parties. The hearing route was justified.

Application B

12. With regard to the PPG, the applicant² considers that the Council has acted unreasonably in refusing permission in the clear, substantive circumstances of the case and has caused the applicant unnecessary expense. The applicant also considers that the Council has prevented or delayed development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
13. The planning application was refused against the Officer recommendation that was set out in the Council Committee Report. A planning decision is itself however one of a matter of judgment and the Council Members are entitled not to accept the professional advice of their officers so long as a case can be made for a contrary view.
14. The reason for refusal plainly identifies the Council's concerns. It also sets out the planning policies contained in the development plan that the Council consider the proposal would be in conflict with, along with national policy. The purpose of the Council's appeal statement is to amplify the matters which are set out in the reason for refusal and this is adequately achieved. There is a clear explanation of the Council's position with regard to the heritage assets and the balancing exercise.
15. The applicant has placed a significant emphasis on a lack of explanation on this matter in the transcript of the Committee, and whether the Council Members were swayed by other issues. What is though of more relevance is the reason for refusal itself and the content of the Council's subsequent appeal statement. This cannot be put aside in light of what was said at the Committee. Whilst I can understand the applicant's frustration due to both the amount of time it has taken for a scheme to come to fruition and that Council Members did not agree with the views that officers had taken during and before the planning application, this is not a case where an alternative view cannot be taken. This is especially so owing to the strong level of protection that is afforded to heritage assets.
16. In particular, deciding on the proposal depends on the balancing exercise that is contained within the development plan policies and national policy. The Council's position considers both harm and benefits in such a balance, with regard to the Council's appeal statement. Whether or not the applicant agrees with it is a different matter. In my appeal decision, I also take a different view.

² When making a costs claim, the appellant is known as 'the applicant'.

However, that is the nature of a decision which is contingent on a balancing exercise. The application of policy does not lead to one position or the other but rather establishes that harm and benefits both need to be considered, as the Council has done. There are not clear, substantive circumstances in this case.

17. The Council has thus not prevented or delayed development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. As a consequence, it has not acted unreasonably. As such, I do not have cause to consider whether unnecessary or wasted expense has resulted.
18. I have also considered whether a partial award should be made, but I reach the same overall conclusion. The Council has provided sufficient evidence across all the grounds of the refusal and so such an award of costs is also not justified.

Conclusion

19. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to Application A or Application B. An award of costs is not, therefore, justified in either case.

Darren Hendley

INSPECTOR