



Costs Decision

Site visit made on 25 April 2022

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 16th June 2022

Costs application in relation to Appeal Ref: APP/M1710/W/21/3282948 The former Monkwood Mission Church, Petersfield Road, Monkwood, Hampshire SO24 0HB

- 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 Tom Patton for a full award of costs against East Hampshire District Council.
 - The appeal was against the refusal of planning permission for "*erection of a detached dwelling, including access, parking and amenity space, following the demolition of the existing dwelling*".
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Decision

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

Reasons

2. 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.
3. Amongst other things, the PPG states that authorities will be at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan and any other material considerations. Related advice in NPPF paragraph 38 makes it clear that authorities should approach decisions in a positive and creative way, working to secure developments that will improve the economic, social and environmental conditions of the area, and seeking to approve applications for sustainable development where possible.
4. In my appeal decision, I have highlighted the fact that in this case the Council accepted that, had they been satisfied as to compliance with sub-section (a) of Policy H16, they would have granted permission for the appeal proposal for a replacement dwelling. No other conflict with Policy H16 was identified. The Council's only reason for not accepting that the scheme complied with sub-section (a) at that time was because of their view that the 2020 permission for conversion had not been fully implemented, or the building lawfully and permanently occupied. This led the Council to advise the applicant to actually carry out those works, in full, and install a permanent occupier, and then re-apply for the same replacement dwelling. Even when the conversion had been partly carried out, the Council continued to resist a replacement dwelling, based on what they saw as departures from the 2020 permission, even though

these were clearly minor and capable of resolution. Throughout, the Council accepted that the proposed replacement dwelling was acceptable, in terms of both the principle and the detail, in all respects except for its timing in relation to the previously approved conversion scheme.

5. In these circumstances, it should have been obvious to the Council that the position that they had taken, and maintained throughout, could not justify a refusal of permission. The Council fully accepted that, even if the present application and appeal did not lead to permission being granted now, the Council would be unable to resist a further application for an identical scheme at some time in the future. It is evident therefore that the result of the Council's action in refusing permission was to delay a development which should have clearly been permitted. In these circumstances, the decision to refuse permission was unreasonable.
6. Equally, it should have been obvious to the Council that their insistence on the conversion scheme being carried out first, only for the building to then be demolished, potentially only a few months later, would involve a considerable amount of waste; not only in terms of the unnecessary additional costs falling on the appellant personally, but also the societal costs of wasted building materials and other resources. In the circumstances, the extent of the waste involved was clearly disproportionate to the matters at stake, and this should have alerted the Council to the fact that their overall position was untenable. The Council's failure to recognise the practical consequences of their decision, and the degree to which this undermined their position, was unreasonable.
7. I appreciate that the Council's actions stemmed from what it genuinely believed to be a correct interpretation of sub-section (a). But that interpretation took little or no account of the context, in terms of the purposes of Policy H16 and the role of the sub-section in that regard. Nor did it take account of the practical consequences, and the absurdity of the position that the Council had put itself in, as a direct result of that interpretation. At no time does the Council appear to have considered the scope for interpreting or applying their policy in any other way than the one that they had adopted from the outset, even though the wording was clearly capable of admitting other interpretations. The failure to give full and proper consideration to the meaning and application of Policy H16 was unreasonable.
8. Furthermore, even without departing from its preferred interpretation of the policy, it was open to the Council to arrive at a different decision, by virtue of the fallback position offered by the 2020 permission. However, they dismissed that argument summarily, for reasons that amounted no more than a restatement of their policy position. At no stage does the Council appear to have weighed up the respective merits of the appeal proposal against the fallback scheme. The Council therefore conspicuously failed to give the fallback scenario proper consideration. In the light of their overall position this was a key element in the Council's deliberations. The Council's handling of the fallback issue was irrational, and therefore unreasonable.
9. For the above multiple reasons, in its decision to refuse permission, and in maintaining that position subsequently, the Council has behaved unreasonably. In so doing, the Council has caused the appellant to incur the costs of an appeal which should not have been necessary. A full Costs Order is therefore justified.

Costs Order

10. 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 East Hampshire District Council shall pay to Mr Tom Patton, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to East Hampshire 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.

J Felgate

INSPECTOR