
Costs Decisions

Site visit made on 25 May 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2022

Costs application in relation to Appeal Ref: APP/T2215/W/21/3274970 Betsham House, Westwood Road, Southfleet DA13 9LZ

- 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 Andrew and Mrs Sally Woolnough for a full award of costs against Dartford Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for alterations to Betsham House together with changes to The Annexe to form an independent dwelling.
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Costs application in relation to Appeal Ref: APP/T2215/Y/21/3274977 Betsham House, Westwood Road, Southfleet DA13 9LZ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew and Mrs Sally Woolnough for a full award of costs against Dartford Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for listed building consent for alterations to Betsham House together with changes to The Annexe to form an independent dwelling.
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Decision

1. The application for an award of costs is refused.

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. The application for a full award of costs is on the basis that the Local planning authority (LPA) acted unreasonably on procedural and substantive grounds, relating to the weight given to the pre-application and application advice provided by its heritage advisor; it failed to produce officer reports as part of its submissions for the appeals; and it changed its stance on the proposal during the course of the applications being determined and did not engage further with the applicant.
4. The National Planning Policy Framework stresses the benefits of early engagement and of good quality pre-application discussion. The applicant sought pre-application advice in good faith and spoke directly with the LPA's

heritage advisor. However, the request for advice from its planning officers did not progress and none was recorded. The LPA has therefore sought to distance itself from the pre-application advice offered by its advisor. While its approach in doing so could have been handled more delicately, I am mindful that such advice is not binding on the Council and, in my main decisions, I considered the individual merits of the appeal scheme afresh and any positive feedback given did not alter my conclusions.

5. The applicant points to a favourable determination of the appeal applications prior to March 2021. Following receipt of consultation responses from its heritage advisor and the highway authority, emails from the LPA indicated that officer reports were to be completed with recommendations for approval. The appellant would therefore have had a reasonable expectation of permission and consent being forthcoming for the proposal. The draft reports produced were compiled as recommendations to the LPA's Interim Development Manager, who had delegated authority to issue decisions. While the presentation of these reports could have furthered discussion between the main parties, as they were not formal determinations of the LPA it was not required to provide them.
6. The main parties disagree on the extent of communication from March 2021, but the LPA claims its Interim Development Manager considered the reports and disagreed with the conclusion, so the applicant was informed of this and the intention to seek further heritage advice. The applicant has neither referred to any such discussion nor responded to the LPA's position in this regard. Although the manner in which the heritage advice was dismissed could have been handled better by the LPA, given the difference in opinion it was both reasonable and proportionate for the LPA to seek further advice regarding the proposals' effect on the listed building.
7. A desk-based assessment (DBA) was subsequently prepared by a heritage consultant at the County Council, as part of a wider Service Level Agreement, and submitted to the LPA in April 2021. The LPA claims it was assessing the content of the DBA and would have updated the applicant before completing further officer reports. This did not occur prior to the appeals being lodged, which ultimately stopped any further action by the LPA in that regard.
8. The use of DBAs is not uncommon, but the description of works and development clearly referred to 'changes to The Annexe to form an independent dwelling'. It therefore appears that the consultant and the LPA's officers initially failed to grasp the nature of the proposal. However, when the applicant submitted further plans with the appeal clarifying the extent of works to the annexe, the LPA acknowledged their extent in its Statement of Case. I also clearly set out the nature of the proposal in my main decision.
9. The misinterpretation of the proposal in the heritage DBA undermines its content to a certain extent but it, nevertheless, still represents a generally clear understanding of the significance of the listed building and the overall effect of the proposal upon it. In any event, it only formed one part of the evidence before me, which also included that compiled by the appellant, and my own observations from my site visit.
10. The applicant suggests that the LPA laboured the point that one additional bedroom to that found in the annexe would make a material difference to the extent of travel from the site. In my main decision, I determined Appeal A on the basis that the annexe is occupied in conjunction with Betsham House, as

there was no certificate of lawfulness to demonstrate its use as a separate dwelling. As such, that aspect of the LPA's case was not determinative in the appeal and it was clear that the proposal did not meet development plan policies in respect of its location and accessibility to services and facilities. The LPA was therefore within its rights to set out the relevant policy approach for the appeal scheme in this regard.

11. On the basis of all of the above, while the LPA could have been clearer in its intentions regarding the applications during their determination, I cannot agree that it acted unreasonably relating to the matters raised by the applicant and the outcome of my main decision demonstrates that it has not prevented or delayed development which should clearly have been permitted. As such, there can be no question that the applicant incurred unnecessary or wasted expense.

Paul Thompson

INSPECTOR