
Costs Decision

Site visit made on 27 June 2022

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 Sep 2022

Costs application in relation to Appeal Ref: APP/K0425/W/21/3287351 The White Horse, 95 West Wycombe Road, High Wycombe HP11 2LR

- 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 S Dadd of Streamdown Property Ltd for an award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for demolition of existing Public House and construction of 9 x 2-bedroom flats (C3) with associated hard and soft landscaping.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The application for cost relates to the fact that the Council, in their response to the appellant's pre-application enquiry, failed to identify that they consider the appeal building to be a Non-Designated Heritage Asset (NDHA). A further claim is that when the Council did make the appellant aware during the course of the appeal application, insufficient justification was provided, along with a lack of evidence to justify refusing planning permission. As a result, the appellant was put to the unnecessary expense of lodging an appeal.
5. It is clear from the evidence that at the point of the pre-application enquiry, the Council made no reference to the potential heritage quality of the building. This appears to stem from a failure to seek advice from the Council's Conservation Officer and the fact that the building is not included on the Council's Historic Environment Record (HER). Whilst on this basis, I can understand why the planning officer failed to highlight the issue, it is clear from the Council's submissions that the building, at the time of the pre-application enquiry, was a candidate for inclusion on the Council's HER. Furthermore, from the submissions, it is clear that there are a number of listed buildings in close proximity to the appeal site. Therefore, on this basis alone, I am surprised that

the Council did not make any reference to heritage issues or recommend that they seek advice from their internal support.

6. To my mind, the pre-application advice given by the Council to the appellant was poor and it should have covered, or at the very least highlighted, all the necessary issues to be considered. Had this advice been given at pre-application stage, I consider it to be likely that the appellant would have re-considered their approach to their application to reflect the additional tests required in relation to heritage assets. I appreciate the appellant may have only sought standard advice, but nonetheless, it must be the role of a pre-application enquiry to identify all issues and to suggest where further discussion is needed. In this respect, I note that the Council suggested further pre-application discussions, but this was not taken up by the appellant.
7. That said, whilst I find that the pre-application provided by the Council was both poor and lacking in the necessary information, given the fact that pre-application advice is not binding, I do not find that this amounts to unreasonable behaviour by the Council.
8. Turning to the process of the determination of the application, it is clear that, upon formal consultation with the Council's Conservation Officer, the issue of the building being considered to be a NDHA was raised. I note the appellant was provided with the opportunity to submit additional details to address the issue, which they did through a Heritage Statement. Upon consideration, the Council considered that the Statement failed to adequately justify the proposal.
9. I acknowledge that the identification of the building as an NDHA at the application stage was far from helpful to the applicant. In this respect however, I note the guidance offered in the NPPG (Paragraph: 039 Reference ID: 18a-039-20190723) that in some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications. As a consequence, whilst I consider it unhelpful, it does not necessarily follow that this amounts to unreasonable behaviour on the part of the Council.
10. With regards to the consideration of the matter in the Planning Officers Report, I consider that the case officer provides a justification for the decision and makes detailed reference to the advice received from the Council's specialist, along with the submission from the appellant. Whilst the decision arrived at may be something that the appellant does not agree with, given the justification and the reference to national and local policy, this does not amount to unreasonable behaviour by the Council.
11. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Adrian Hunter

INSPECTOR