
Costs Decision

Site visit made on 29 September 2022

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th October 2022

Costs application in relation to Appeal Ref: APP/U2235/Y/21/3277293 Bicknor Farm, Sutton Road, Maidstone, Kent ME17 3NG

- 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 J Mills for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of listed building consent for demolition of a curtilage listed building at Bicknor Farm to allow for a new residential development granted under planning application 20/500713/FULL.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) states that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to issues arising from the merits of the appeal.
3. In my appeal decision I have referred to errors in the Council's decision notice. However, these errors formed no part of the application for costs. Indeed, the appellant acted on the decision notice as if it had been drafted correctly. Even if the errors in the decision notice amounted to unreasonable behaviour, they did not cause the appellant to incur any additional expense in the appeal process. Whether or not the Council's decision notice was valid, the outcome of the Council's actions was that listed building consent was not granted. It is therefore appropriate to determine this costs application on the basis of the statements before me, notwithstanding the errors in the Council's decision notice.
4. The appellant seeks a full award of costs, primarily on substantive grounds, arguing that the Council's approach to the listed building application was inconsistent with its reasoning in relation to a planning permission that had been granted for the redevelopment of the site. The appellant also submits that the Council was wrong to state that alternative designs had not been properly considered. The third limb of the costs application is that Members did not visit the application site.

5. Planning Practice Guidance gives examples of types of behaviour that may give rise to a substantive award against a local planning authority¹. One example is not determining similar cases in a consistent manner. Planning application 20500713/FUL sought permission for demolition of the existing buildings, including Building G, re-modelling of an existing dwelling and erection of seven self-build dwellings at Bicknor Farm. The officer's report included the following reasoning in relation to Building G:

"The building could potentially be retained as some form of outbuilding or extended to provide a dwelling. However, it would sterilise quite a large part of the site in the northwest corner and on balance I consider the benefits of this scheme in enhancing the setting of the primary listed farmhouse outweigh the loss of this curtilage listed building and any minor harm to the farmhouses significance through its removal in accordance with policy DM4 and the NPPF."

6. The Council's reason for opposing the grant of listed building consent was that:

"The very limited public benefits arising from the proposal do not clearly and convincingly justify the demolition of the curtilage listed building and therefore do not outweigh the less than substantial harm to the curtilage listed building."

7. It is important to note that applications for planning permission and listed building consent are not the same and that different assessments will often be required. That said, in the particular circumstances of this case, the nature of the judgement was the same. It involved balancing the public benefits flowing from the proposed redevelopment against the heritage harm (on the Council's assessment) arising from the demolition of Building G. There is no evidence before me of any material changes in circumstances, or new evidence before the Council, that might have affected that balance or justified a different approach being taken.
8. The Council argues that the issue was finely balanced and that Committee Members were entitled to place different weights on the relevant considerations. In general terms, Members are of course entitled to reach a different view to planning officers. However, in this case the decision to grant planning permission for the redevelopment, including demolition of Building G, was a decision of the local planning authority. Members were not entitled to disregard it, or give it less weight, simply because it happened to be a decision that was taken under delegated powers. The fact that the officer's recommendation on the listed building application was said to be finely balanced does not address the point of consistency with the reasoning in relation to the planning application.
9. I do not consider that the approach to alternative schemes is a significant factor in this costs decision. Nor do I think that Members acted unreasonably by relying on a committee report, together with an officer's presentation which included aerial photographs and site photographs, rather than carrying out a site visit themselves. However, in my view it was unreasonable to reach a judgement that was diametrically opposed to the same judgement on the related planning application without being able to point to any evidence or justification for so doing.

¹ Planning Practice Guidance – Appeals, paragraph 049, Reference ID: 16-049-20140306

10. I consider that withholding listed building consent amounted to unreasonable behaviour on behalf of the Council. This caused the appellant to incur unnecessary expense in mounting the appeal. The conditions for an award of costs have been met.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maidstone Borough Council shall pay to Mr J Mills 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.
12. The applicant is now invited to submit to Maidstone Borough 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.

David Prentis

Inspector