

Costs Decisions

Site visit made on 19 July 2022

by **S Edwards BA MA TCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th October 2022

Costs application in relation to Appeal A Ref: APP/D1265/W/21/3288299 Grade 2 Listed Walled Garden, Wootton Lane, Wootton Fitzpaine DT6 6NH

- 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 and Mrs Brooks for a full award of costs against Dorset Council.
- The appeal was against the refusal of planning permission for 'Application to erect no.4 bedroom dwelling and full restoration of grade 2 listed wall surrounding site'.

Costs application in relation to Appeal B Ref: APP/D1265/Y/21/3288302 Grade 2 Listed Walled Garden, Wootton Lane, Wootton Fitzpaine DT6 6NH

- 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 and Mrs Brooks for a full award of costs against Dorset Council.
- The appeal was against the refusal of listed building consent for 'Application to erect no.4 bedroom dwelling and full restoration of grade 2 listed wall surrounding site'.

Decisions

1. The applications for the award of costs in relation to Appeal A and Appeal B are refused.

Preliminary Matter

2. A single application for costs was submitted in relation to both the planning appeal and the listed building consent appeal. I have therefore dealt with them together, in order to avoid repetition.

Reasons

3. The national Planning Practice Guidance¹ (the PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG² identifies different types of behaviours, which may give rise to a substantive award against local planning authorities.
4. The applicants argue that the Council acted unreasonably in refusing planning permission and listed building consent for the appeal scheme, as they consider that the matters at issue could have been addressed through negotiation as

¹ Paragraph: 030 Reference ID: 16-030-20140306.

² Paragraph: 049 Reference ID: 16-049-20140306.

part of the applications process and by the imposition of conditions. It is also alleged that the Council's reasons for refusal and subsequent submissions relied on vague and generalised assertions, which failed to clearly set out and substantiate its concerns regarding the proposal.

5. No rebuttal has been provided by the Council in response to the costs applications. Nevertheless, the Council has, within its submissions, adequately substantiated its concerns in respect of the proposed dwelling's location, the effect of the scheme on the special interest of the Grade II listed heritage asset and the Dorset Area of Outstanding Natural Beauty (AONB). Furthermore, and as detailed in my Decisions, there is no certainty that the Reason for Refusal related to the effect of the proposal on the Dorset AONB could have been appropriately dealt with by condition.
6. The Case Officer's report made a clear distinction between the effect of the proposal on the character and appearance of the area (how it would be perceived from outside of the walled garden), and the impact that the scheme would have on the special interest of the listed walls and bothy. Reading the Case Officer's Reports and the Council's subsequent statements as a whole, I am satisfied that there were no contradictions in the way the proposal was assessed.
7. The less than substantial harm identified by the Council was appropriately weighed against the public benefits associated with a proposal which, it was argued, was justified because it would enable the restoration and conservation of a designated heritage asset. Taking account of the National Planning Policy Framework and Historic England's advice, the Council considered the presented evidence, and reached the view that the appeal scheme did not constitute the minimum necessary to address the conservation deficit and secure the long term future of the affected assets. On this basis, the Council was entitled to reach the view that the appeal scheme could not be regarded as enabling development.
8. It is clear that the Council's assessment of the proposal relied in part on matters of planning judgment and the necessary balancing exercise was carried out, based on the particular circumstances of the case. Having regard to the available information, I have no reason to believe that the Council acted unreasonably in its assessment of the appeal scheme.
9. My attention has also been drawn to the support expressed in favour of the appeal scheme by the Parish Council and elected ward Councillor for the area, who has requested the applications to be referred to the Planning Committee. Though it does not fall within the remit of the appeal process to comment on the Council's scheme of delegation and internal procedures, there is no evidence before me which demonstrates that the Council acted unreasonably in the way it processed and determined the planning and listed building consent applications.
10. Overall, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. On this basis, I conclude that the awards of costs are not justified.

S Edwards

INSPECTOR