



Costs Decision

Site visit made on 8 November 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Costs application in relation to Appeal Ref: APP/Z1510/W/22/3295454 Beechcombe, 2 St Peter's-In-The-Field, Braintree CM7 9AR

- 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 & Mrs Corkerry for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for a development described as proposed 1.5 storey dwelling with three bedrooms.
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Decision

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

Reasons

2. Paragraph 16-028-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 16-049-20140306 of the PPG states that examples of unreasonable behaviour include failure to produce evidence to substantiate reasons for refusal, vague, generalised, or inaccurate assertions about a proposal's impact, and, persisting in objections to elements of a scheme which an Inspector previously indicated were acceptable.
3. The costs application sets out the grounds upon which the appellant considers the Council acted unreasonably. The appellant is of the view that the Council's decision is contrary to the findings of an Inspector for a previous appeal decision¹, is at odds with the pre-application advice it gave and comments in correspondence with the planning officer during the determination of the application, and that the Council instigated a revised consultation response from its heritage advisers.
4. The previous appeal decision is a material consideration, but the Council is not bound by it, and neither am I. The previous Inspector makes clear what his main concerns were about that scheme. The Inspector determined the scheme that was before him, and did not make prescriptions about what he considered might be acceptable, including whether the principle of a dwelling is acceptable. I also have considered the specific scheme before me on its own merits and impacts.

¹ Appeal decision Ref. APP/Z1510/W/16/3147581.

5. The appellant has focussed upon and addressed what it interpreted as the Inspector's concerns about that proposal in the design of this proposal. The Inspector's decision highlighted the spacious setting of Church of St Peters and the continuity of the relationship between it and the Braintree and Bradford Street Conservation Area (BBCA). From my visit, I could see that this appeal development before me would clearly erode the space of the current setting and it would inhibit the continuity and relationship between the Church and the BBCA, and there would be clear discernibility of this from a number of nearby vantage points.
6. Therefore, while this proposal has addressed some of the matters highlighted by the previous Inspector, it is still clearly harmful to the setting and significance of designated heritage assets. I do not agree with all of the Council's final findings. However, I consider much of the Council's concerns about the harm from the scheme are adequately reasoned, justified, and having regard to the findings of the previous Inspector, the Council has not behaved unreasonably in taking the overall view it has done.
7. Amongst other things paragraphs 16-032-20160306 and 16-033-2010306 of the PPG advise that costs cannot be claimed for the period during the determination of the planning application and costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceedings.
8. The pre-application advice is clear that it is not binding on the Council. The advice in the heritage impact section appears phrased such that it reiterates technical advice from a Historic Buildings Consultant, rather than expressing the view of the Council's officer. The pre-application advice is inconsistent with the Council's final decision on the application, and I am informed a refund has been given for that advice. Nevertheless, the Council is entitled to take a different view when determining an application, as long as this is adequately reasoned.
9. I have noted the discussions between the parties during the determination of the application. The planning officer does not have delegated authority issue decisions upon planning applications. Rather they make a recommendation to the decision making officer with the relevant delegated authority. They are entitled to disagree with the recommendation of the planning officer, and come to an alternative view, so long as it is a well-reasoned judgement on the planning merits of the proposal.
10. It is not necessarily uncommon and is at the Council's discretion to question and seek a second opinion from a technical consultee where there are concerns, including over the consideration of statutory duties in respect of heritage assets. The representations suggest legitimate concerns in respect of heritage impacts. The Council's report is a summary of its findings upon the main considerations. The Council had both heritage adviser responses before it, and there is nothing before to suggest it did not take both into account and the previous appeal decision, in its deliberations.
11. I have had regard to all responses, the previous appeal decision, and other evidence in reaching my findings on the proposal. It might not have expressly stated the weight it gave to some public benefits, but I have found much of the Council's harm it found and overall decision upon the application to have been adequately reasoned. Moreover, this all took place during the determination of the application and not the appeal process.

12. The form of any future scheme on the site is by no means certain and there could be many different possible permutations for a dwelling on the site. While the Council may have set out the view that the principle of residential development would be unacceptable in its report, the principle of a dwelling (such as in outline) is not the appeal proposal. Moreover, it was not a reason for refusal on the statutory decision notice.
13. My assessment of the proposal is upon the scheme before me. It is not necessary or appropriate to come to a view on the matter of the principle of a dwelling to reach a finding on this proposal. Therefore, it is not a determinative matter in my decision, but one that the appellant has chosen to discuss in detail as part of making their case for the appeal scheme that is before me. The Inspector did not make a finding that the principle of a dwelling was acceptable. Even if I agreed with the appellant on this particular point, this appeal would still have failed. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process is not demonstrated.
14. In respect of the second reason for refusal, having saw what I did I am satisfied that the Council's decision in relation to the planning application was well-reasoned at that time, particularly in the absence of substantive evidence to the contrary. Therefore, the Council has not behaved unreasonably in reaching its findings in respect of this matter, and the appellant has not incurred unnecessary or wasted expense by undertaking the Overshadowing Assessment.
15. I note the appellant's frustration at the pre-application advice and the process of the Council's consideration of the application. Should the appellant wish to do so, they may wish to pursue this further with the Council. However, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process is not demonstrated.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated.

Dan Szymanski

INSPECTOR