



Costs Decision

Site visit made on 18 October 2022

by A Berry MTCP (Hons) MRTPI

Thanks. See you appointed by the Secretary of State for Communities and Local Government

Decision date: 25 November 2022

Costs application in relation to Appeal Ref: APP/A1910/W/22/3296561 Buttercup and Ziggy Barns, Birch Lane, Flaunden HP3 0PT

- 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 Flaunden Construction Ltd for a full award of costs against Dacorum Borough Council.
 - The appeal was against the refusal of planning permission for the variation of condition 3 attached to planning permission Ref 21/00365/FUL which states that: *The development hereby permitted shall be constructed in accordance with the materials specified on the application form submitted with application 20/00089/FUL with the exception of those which describe boundary treatment and the materials between the windows - these are to be addressed via other conditions which require details of boundary treatment and materials.*
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby cause the party applying for costs to incur unnecessary expense in the appeal process.
3. The application relies on the fact that the reason for refusal was not supported by evidence; that the Council had previously approved the use of the same material on the same building and therefore the Council was being inconsistent in refusing its use; that the Council did not refute the appellant's evidence in respect of the document, Historic England's "Best Practice Guidelines for Adaptive Re-Use" (the document); and that the Council failed to categorise the building correctly.
4. Planning Practice Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.
5. The reason for refusal set out in the decision notice is complete, precise, specific, and relevant to the application. It also clearly states the policies of the Dacorum Borough Core Strategy 2006-2031 (2013) and the Dacorum Borough Local Plan 1991-2011 (2004) that the development would conflict with. This reason has been adequately substantiated by the Council in its Officer Report, which details how the Council considers the development would result in harm to the character and appearance of the Flaunden Conservation Area.

6. The wording of Condition 3 attached to planning permission Ref 21/00365/FUL, could have been explicit in stating the approved materials, rather than directing the reader to an application form for an earlier approval. Nevertheless, the application form is clear in that horizontal boarding was the material that was approved for the exterior walls.
7. The acceptability or otherwise of a proposed material on a particular building, in the context of other buildings as well as the Conservation Area, is a matter of subjective judgement. The Council was entitled to come to the view that the use of horizontal boarding would not be acceptable. Although it can be seen from my decision that I do not share the Council's view, this does not constitute unreasonable behaviour on behalf of the Council.
8. The Council disputes they have previously approved the use of horizontal boarding on the building. The appellant has provided evidence to the contrary, in the form of a decision notice and supporting documents in Appendix 1 of their Statement of Case relating to a previous application¹. However, that permission involved a different development that dates from 2016. The Council are not bound by previous decisions and each application must be determined on its own merits.
9. Historic England's "Best Practice Guidelines for Adaptive Re-Use" did not form part of the appellant's planning application submission, instead they relied upon it at the appeal stage. Therefore, it did not amount to any unnecessary cost to the appellant in deciding to lodge an appeal. Notwithstanding this, I agree with the Council that this document is not applicable to the proposed development as the building is of modern, rather than, traditional construction.
10. The Council's description of the appeal building may not have been precise however, it was clear that the Council considered the building to be a modern structure rather than a traditional barn, and it was on this basis that they considered the material to be unsuitable. Therefore, it did not amount to any unnecessary cost to the appellant in deciding to lodge an appeal.
11. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme, rather they arrived at a different conclusion than I have arrived at, which is not a basis for unreasonable behaviour. Therefore, the appeal could not have been avoided. I have found that the Council had legitimate subjective concerns about the impact of the development, which justified its decision. The appellant had to address these concerns in any event.

Conclusion

12. I therefore find that unreasonable behaviour by the local planning authority, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A Berry

INSPECTOR

¹ 4/02298/16/DRC