
Costs Decision

Site visit made on 20 December 2022

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/M1005/W/20/3306736

St Elizabeth House, Matlock Road, Belper DE56 2JD

- 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 Malik for a full award of costs against Amber Valley Borough Council.
 - The appeals were against the refusal of the Council to grant planning permission for Minor alterations to the existing house to convert to lettable accommodation (C1) with extensions to one end to provide new annex property. The erection of a new conference centre (F1(e) use) with ancillary parking spaces, and new subsidiary dwelling within the existing grounds.
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Decision

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

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 051² of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
3. The applicant argues that the Council has failed to substantiate its reasons for refusal, relied on vague, generalised and inaccurate assertions which are not supported by objective analysis, taking a very long time to determine the application and not responding to requests for information, and that it has prevented or delayed development which should clearly be permitted having regard to the development plan, national policy and material considerations. It is also noted that the Council has failed to submit an appeal statement.
4. The Council's decision sets out three reasons for refusal, giving more detail than is usually the case. Each is based on its concerns regarding designated heritage assets, namely the listed St Elizabeth House, the Belper and Milford Conservation Area and the Derwent Valley Mill World Heritage Site. The reasoning in the officer's report provides the basis for the decision and is based on and supported by statements from Historic England and the Council's conservation officer. The applicant has not provided any specific examples of

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

omissions in this regard, and I see no reason to conclude that the Council acted unreasonably. Moreover, the Council is not obliged to submit an appeal statement.

5. The costs application also raises a concern that the Council failed to give sufficient weight to the public benefits of the development, in line with Paragraph 202 of the National Planning Policy Framework (the Framework). However, the overall conclusion at the end of the heritage section of the officer's report states *in accordance with Paragraph 202 of the NPPF, the identified harm needs to be weighed against the public benefits of the proposal, this assessment of balance is contained in the conclusion of this report*. The report's planning balance sets out the public benefits, namely a modest contribution to the Borough's housing supply, bringing a vacant listed building back into use, employment creation and development within a sustainable location. The report states that these benefits *are not considered to outweigh the harm identified*.
6. I acknowledge that the applicant disagrees with the Council but the balance is based on planning judgement and is not necessarily evidence of inadequate analysis. The Council is entitled to take the view that the public benefits do not outweigh the identified harm and in doing so it has not acted unreasonably.
7. Moreover, with regard to the economic boost to be associated with the conference centre, the evidence makes it clear that the conference centre would only be used at weekends and school holidays, which would limit its economic contribution, and the benefits arising from the construction phase would be short-term. The conference centre would also be a 'dry-hire' which presumes that hiring organisations would provide most of their own staff.
8. With regard to the enhancement of the landscape setting, I acknowledge that the removal of some mature vegetation has revealed the full visual impact of St Elizabeth House particularly when viewed from the nearby Matlock Road, which has greatly added to its appreciation. However, the landscape proposals are weighted towards providing screening of the proposed conference, and this recently revealed view would be largely obscured. As such, and as I have set out in my decision, I give little weight to the arguments advanced with regard to landscape proposals for the site. Nor does it seem likely, given the current state of investment and advanced restoration works to the listed building, that the building would be returned to its vacant state.
9. I give no weight to the apparent failure of the Council's conservation officer to visit the site, which is in any case disputed by the Council. The appeal is concerned with planning matters only, not listed building consent. It is the decision of the planning officer to decide what weight to give consultee responses and in any case, there was clearly a significant body of evidence containing many photographs, topographic surveys and historic background provide by the appellant. It is also the case that entry onto the site is not necessarily required to assess the issue of the effect of the development on the asset's setting, the settings of other listed buildings nearby, the conservation area or the World Heritage Site. The school access road runs directly alongside the site's south-eastern boundary for a large proportion of its length and this road appears to be open when the school is open.
10. The application was submitted on 2 December 2020 and the decision notice was issued on 11 March 2022. The Council's costs rebuttal states that it

accepts that there were delays but that additional time was given to address comments raised during the determination period. The evidence before me includes two different site plans, both dated April 2021, a Tree Report dated April 2021 and a statement of community benefits dated January 2022. Clearly there was communication between the parties and it appears that the applicant was responding to concerns raised during the application period. It is also evident that there had been considerable communication between the Council and the applicant before the application was submitted.

11. I acknowledge that after submitting additional details in May 2021, the Council did not respond to the applicant until September 2021. There were at that point outstanding consultee comments that the officer needed to pursue. However, in November 2021 the officer highlighted that given the remaining and outstanding objection from Historic England, determination was unlikely to be favourable. The subsequent submission of the statement of community benefits suggests that the officer delayed the report further to give the applicant an opportunity to provide evidence of public benefits.
12. As such, I give little weight to the argument advanced by the appellant that the Council did not engage with the applicant sufficiently during the application period.
13. Moreover, although it is generally undertaken as best practice, there is no requirement for planning officers to engage or to give feedback to enable an application to be amended to improve its chances of success. In this case it appears that additional information was supplied after the application was submitted, and that there was additional dialogue between consultees and the Council's statutory consultees.
14. Nonetheless, there is nothing before me to justify the delay over the summer of 2021 other than that the Council had a backlog of applications. This delay could be construed as unreasonable behaviour. However, I am not satisfied that this behaviour has led to costs at appeal as the outstanding concern is the impact of the development on designated heritage assets, contrary to the local development plan, legislation and national guidance, and this has not been resolved despite considerable dialogue between the parties before and during the determination period.

Conclusion

15. Unreasonable behaviour leading to unnecessary costs at appeal has not been demonstrated. The application for an award of costs is refused.

A Edgington

INSPECTOR