



Costs Decision

Site visit made on 16 January 2023

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2023

Costs application in relation to Appeal Ref: APP/X0415/W/22/3296452 Land adjacent to 52 Whielden Street, Amersham, HP7 0HU

- 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 Ms Maddie Thornton for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for the erection of a self-build, four bedroom detached dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant alleges that the Council has behaved unreasonably with respect to the substance of the matters forming the subject of the appeal. It is alleged the Council prevented or delayed a development which should clearly be permitted. It is also argued the Council failed to substantiate its reasons for refusal and made vague, generalised assertions about the proposal's impact particularly with regard to impact on heritage assets and the character and appearance of the area (Ground 1), living conditions (light) (Ground 2) and in applying the overall planning and heritage balance (Ground 3).

Ground 1 – Heritage and Character and Appearance

4. The Council's first reason for refusal deals with the impact on heritage assets and the character and appearance of the area in some detail. This was informed by the Case Officer Report which under the heading "design/character and appearance and impact on nearby listed buildings" gives a detailed assessment of the area, the heritage assets and the proposed development and reaches a clear conclusion.
5. Even though, the appellant undertook their own detailed assessment of these matters and reached a different conclusion, the level of detail provided by the Council is proportionate and there is no obligation for schemes of this scale to be considered through a design panel or equivalent. Thus, I find the Council has appropriately substantiated its first reason for refusal and has not therefore acted unreasonably in this regard.

Ground 2 – Living Conditions (light)

6. The second reason for refusal clearly states, “the proposed dwelling, by virtue of its height, depth and proximity to the neighbouring property at No 54a Whielden Street, would appear visually intrusive and overbearing when viewed from No 54a's ground floor habitable spaces and its rear amenity space immediately adjoining the dwelling”. It goes on to say, “this will be exacerbated by a potential loss of light due to the north easterly location of the new dwelling with respect to No 54a”.
7. The Residential Amenity section of the Case Officer Report clearly explains the relationship between the proposed dwelling and No 54a. It states the proposal would “lead to a detrimental visual overbearingness on the ground floor living spaces and rear garden area of this neighbouring dwelling”. The Case Officer Report further explains, “the north-eastern orientation of the flank wall may also lead to some loss of light to the ground floor habitable spaces of No 54a, which has not been demonstrated otherwise through a sunlight/daylight survey given its close relationship as proposed, and the orientation whereby morning sun to No 54a would be affected”.
8. I acknowledge paragraph 125 of the National Planning Policy Framework states that when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site as long as the resulting scheme would provide acceptable living standards.
9. However, the appellant’s Sunlight and Daylight Report was submitted with the appeal, there was no such assessment before the Council when it made its decision or when the Case Officer Report was written. Because the Council didn’t ask for such a report or raise the issue with the appellant is not helpful, but it is not unreasonable given the Council’s other concerns.
10. Even though I have found no harm with regard to living conditions, irrespective of whether any consultees raised the issue, the Council is entitled to reach its own judgment and its reasoning in the Case Officer Report is unambiguous. Given the scale and positioning of the proposed dwelling it was not unreasonable in the absence of evidence to the contrary to find there could be a potential loss of light. Whilst I acknowledge Policy GC2 of the Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011 makes reference to the need for a “significant loss of sunlight and daylight”, without evidence the Council were unable to accurately determine whether its concerns in this regard were significant or not.
11. The Council gave clear reasons in the Case Officer Report which explain why they were not satisfied the scheme would provide acceptable living conditions with regard to outlook, sunlight and daylight. It was ultimately the appellant’s choice to commission detailed technical evidence, thus, in this regard, overall, I find the Council has not acted unreasonably.

Ground 3 – Planning and Heritage Balance

12. I accept that had the Council formally reconsulted and received further detailed comments from its Heritage Officer, the Council may have found less harm to the designated heritage assets. However, the Case Officer Report is clear in

that the revised scheme in the opinion of the Heritage Officer would still result in harm to the Old Town Amersham Conservation Area and the setting of the grade II listed Crown Farmhouse, 52 Whielden Street. The Case Officer Report correctly makes clear that this harm carries great weight. The evaluation section of the same report identifies all of the relevant public benefits and affords weight to each of them. Just because the weight afforded, differs from that suggested by the appellant does not indicate that the Council's planning and heritage balance is not robust.

13. Even if the Council had accepted all of the different weightings proposed to be afforded to each public benefit identified by the appellant, it is clear that the Council's decision would have been the same in that all those benefits combined would be insufficient to outweigh the great weight to be attached to the harm identified to the designated heritage assets. This is irrespective of where on any spectrum or dial that harm lies as it still carries great weight. Therefore, overall, the Council's decision to refuse the scheme was inevitable and the appeal was not therefore avoidable.

Conclusion

14. The Council has not acted unreasonably in reaching the conclusions it did and in refusing the application. The Council has exercised its duty to determine this planning application in a reasonable manner, and so the appeal could not have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated on any of the grounds and therefore a full or partial award of costs is not justified.

L Fleming

INSPECTOR