
Costs Decision

Site visit made on 29 March 2023

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Costs application in relation to APP/F1610/D/22/3312882 Priory Estate, Road to Priory Estate, Poulton, GL7 5JB

- 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 Julian Jackson for a full award of costs against Cotswold District Council.
 - The appeal was against the refusal of planning permission for demolish existing garage and build an attached annexe, new entrance hall, kitchen extension, loft conversion, turning and parking facilities.
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Decision

1. The application for a full award of costs is allowed.

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. The PPG makes it clear that a Local Planning Authority (LPA) is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The appeal followed the refusal of permission on 16 September 2022 of an application made on 25 September 2020 for demolish existing garage and build an attached annexe, new entrance hall, kitchen extension, loft conversion, turning and parking facilities. There was a single reason for refusal which was concerned with the impact of the proposals upon the significance of the host building as a non-designated heritage asset (NDHA). My decision, which accompanies this costs decision, disagreed with the Council's decision, and allowed the appeal.
4. A number of matters are stated to be the subject of this costs application, however, the PPG is clear that you cannot claim for costs relating to the original planning application. Any unnecessary costs should relate to the appeal process. Whilst general handling of an application and discussions within the application process can be frustrating for an applicant, they are not matters that fall to be considered within an application for costs at appeal as they are not directly related to the appeal as is required within the PPG. In a similar vein whether the proposal should, or should not have, been subject to pre-application advice is not a matter relating to the preparation of this appeal

and awards cannot extend to indirect losses such as alleged delays. Despite this the appellant's claim for costs is also based upon a claimed failure to have regard for government policy and the Council's own policies i.e., on a substantive basis in justifying the refusal reason.

5. Paragraph 203 of Framework confirms that the effect of an application on the significance of a non-designated heritage asset should simply be considered in determining the application. In weighing applications that directly, or indirectly, affect a NDHA a balanced judgement is required having regard to the scale and harm or loss and the significance of the heritage asset. The approach, and wording used, by the Council is akin to the weighted exercise associated with less than substantial harm to a designated heritage asset.
6. Paragraph 201 of the National Planning Policy Framework 2021 (the Framework) is clear that it is only applicable to designated heritage assets. Where there is less than substantial harm, for example, this should then be weighed against the public benefits. The appeal site is not a designated heritage asset. It is a NDHA where enhancement is welcomed, where possible, in line with policies within the Local Plan. This was specifically confirmed by the appellant's heritage submission, but the Council appear to have pursued enhancement as a requirement for approval.
7. The Council also sought to weigh harm to the NDHA against the public benefits rather than the significance of the heritage asset. Whilst it is reasonable for parties to come to a different conclusion, based on the same information, the submissions before me make clear reference to a balance of harm against the public benefits identified. Indeed, this is again referred to in the costs rebuttal from the Council as well as emails from the case officer during the application process. NDHA's are not intrinsically protected. They, compared to designated heritage assets, are of lower significance and should be assessed accordingly as separated out within both Local and National Policy.
8. The appellant submitted extensive evidence regarding the building in question which, ultimately, supported that whilst the building is a NDHA its significance had been diminished as a result of extensive alteration and re-build over several years. Whilst the Council state that all submitted information was considered only two items are listed, within the committee report section 9, as the applicant's supporting information. These included a design and access statement and an ecological impact assessment report. Reference is made within the report to energy performance, for which evidence was submitted, but beyond this the committee report fails to acknowledge or respond to heritage evidence by the appellant during the application process. It is therefore difficult to evidence all of the documents that were taken into account.
9. This is of particular importance in this case as the proposal was determined by the Planning Committee. The Council's report should have been more robustly prepared for the benefit of the committee reading and deciding based upon this document. Given that heritage was a main, and material consideration, I find that the Council should have advised the committee of, summarised and responded to, the extensive heritage information prepared by the appellant to enable them to take it into account within their determination. By limiting the description of the appeal site to a single paragraph (10.11) which is essentially a brief description from the Council's Conservation Officer I have no evidence that the Council, and in turn the Planning Committee who made a decision

based upon this report and the recommendations of the case officer, fully took into account the information submitted as part of the proposals by the appellant. Had more information been fully available it is not impossible that the committee may have had a differing view perhaps shared with the ward member who referred the proposal to committee in the first instance.

10. The fact the appellant's agent was able to speak, for a limited time period, at committee does not rectify this. The Council should have adequately presented the heritage advice and information, from all submissions, and undertaken appropriate assessment of this information within the context of both the Local Plan and the Framework for the benefit of committee. There is no evidence this has happened based upon the Council's report before me. Overall, the basis for assessment, as an NDHA, was not based in policy and appears to have blurred the lines of assessment between NDHA and designated heritage assets, the latter falling to consider public benefits against identified harm.
11. Furthermore, the Council have made unspecified reference to the Cotswold Design Code within the refusal reason having only assessed one element (the front extension) against this document. No copy of the Code was submitted with this appeal and the Council have not substantiated actual conflict with this document as part of their refusal reason. The appellant has, therefore, experienced further wasted expense trying to justify the proposal against unspecified elements of the Design Code. The Council's report, written in 2022, also sadly references the Framework (2018) which adds to like likelihood that the report was potentially overtyped from a previous application which should have been spotted when checked prior to release.
12. I do not find that the Council had a reasonable basis for its stance with regard to the highly protective treatment of the NDHA within this appeal. In this case there is both cause and effect which has resulted in unnecessary expense. It can be seen from my decision that I found there were insufficient grounds to refuse the appeal as a result of my findings for the refusal reason. In failing to produce relevant evidence to support the reason to refuse planning permission, I consider that the Council has acted unreasonably resulting in unnecessary expense for the appellant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cotswold District Council shall pay to Mr Julian Jackson the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Cotswold District Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Eleni Randle

INSPECTOR