



Costs Decision

Site visit made on 22 May 2023

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

**Costs application in relation to Appeal A: APP/T3725/W/22/3306329 & Appeal B: APP/T3725/Y/22/3306330
64-66 Market Place, Warwick CV34 4SD**

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990 as amended, sections 20, 89 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the Local Government Act 1972, section 250(5).
 - The application is made by Cobalt Developments for a full award of costs against Warwick District Council.
 - The appeal was against the refusal of planning permission (Appeal A) and the refusal of listed building consent (Appeal B) for the conversion of offices into 2 one-bedroom apartments, new staircase extension to the rear yard and associated works.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the *Planning Practice Guidance* 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. In relation to the first Reason for Refusal for Appeal A, and the sole reason for refusing Appeal B, similar alterations to the building were approved and consented in 2009 and 2010 (the previous decisions). I recognise the courts have found the need for consistency in the decision-making process. I also acknowledge that the specific wording of national and local heritage policy has changed little since that date. However, the relevant policies are worded in a manner that allows their application with an element of judgement. With the exercising of such judgement, it does not follow that like cases have to be decided in the same way, but, where a decision-maker chooses not to follow an earlier decision of theirs, they should give clear reasons.
4. When considering an impact on the special architectural and historic interest of a listed building, the application of the wording of national and local policy and its practical implications on what works are allowed as a consequence have evolved, changed and adapted to some extent over the years. Therefore, with the passing of more than a decade since the previous decisions, it cannot be assumed the judgements exercised would be the same now, or that the case would be determined in a like manner. In my opinion, although I have found differently, the Council has expressed its concerns about this scheme sufficiently to indicate why it should be refused on this ground. As such, I consider its position relating to the impact on heritage assets was not

unreasonable, and while it has not expressly said why it did not follow the previous decisions, given the sufficiency of its case and the passage of time that, of itself, does not offer grounds for me to come to a different view.

5. Moving on to living conditions (the third Reason for Refusal in Appeal A), as I have shared the Council's concerns, I find its decision to refuse that appeal on this basis was not unreasonable. I recognise my decision was based on the amended plans, but consider that has not had a bearing on the approach to this particular issue.
6. However, it was said the primary issue behind the second Reason for Refusal was one of harm to amenity by way of parking stress. Amenity of nearby residents is only mentioned briefly though in both the decision and the Officer Report. I see nothing referencing this matter in the upper case wording of either of the 2 policies cited, while no specific evidence to indicate such stress has been forthcoming. As a result, if that is the underlying concern behind this Reason, it is nothing more than a generalized assertion and has not been adequately substantiated.
7. Indeed, the summaries of the 2 policies cited in the Reason for Refusal focussed on highway safety, and so it is understandable to assume that was the area the Reason was addressing. The Council has not demonstrated why, given the existing parking demands of the premises, the sustainable location in a town centre, and the fact that the kerbside would be used for any surplus parking, the shortfall in on-site provision would compromise highway safety. I therefore find its actions in relation to this Reason for Refusal have been unreasonable, so requiring the applicant to incur unnecessary expense.
8. Turning to the fourth Reason for Refusal relating to the adequacy of the waste management provision, I see nothing in the response from the consultee to show they objected, in principle, to the proposal as it was before them. Indeed, if that was the case, I would have expected their comments to be an objection on the grounds of inadequate waste storage and/or the presence of steps. For this reason too I interpret the consultee's advice, and the Council's subsequent position at this appeal, as not being an objection on the basis that refuse would have to be carried down stairs from the flats to the refuse storage point. Rather, to me the consultee's response identifies matters that could be resolved by confirmation and/or conditions. No particular steps have been identified that would be sufficient to discourage the moving of refuse. Indeed when the Officer Report describes the routes the residents would have to take to carry waste to the pavement it does not refer to having to use steps. The concerns about distance and possible alternative storage options have also not been substantiated, or how storing refuse elsewhere would still ensure it was collected, as this occurs now only at the front of the building. I therefore find this too is a generalized assertion.
9. Finally, the Reason accepts there may be space in the parking area to store waste but questions whether this can be achieved with the parking of 2 cars and the waste for the commercial units. However, the Council has expressed no view on how that compares to the parking and storage of waste in connection with the existing situation and the current use of the rearmost element, and whether or not what is now proposed is more or less harmful. Consequently, its actions in relation to this concern have also been unreasonable, so requiring the applicant to incur unnecessary expense.

Conclusions

10. Accordingly, I conclude unreasonable actions resulting in unnecessary expense have not been demonstrated in relation to heritage matters and the living conditions of future residents. However, unreasonable actions resulting in unnecessary expense have been demonstrated concerning the parking provision and the waste management at the site. I therefore conclude a partial award of costs is justified, limited to those costs incurred by the applicant in responding to Reasons for Refusal 2 and 4 on Appeal A.

Costs Order

11. 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 Warwick District Council shall pay to Cobalt Developments, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing Reasons 2 and 4 in the decision for Appeal A; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Warwick 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.

JP Sargent

INSPECTOR