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## Costs Decision

Site visit made on 3 August 2023

**by A Edgington BSc (Hons) MA CMLI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 August 2023**

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**Appeal Ref: APP/N3020/W/23/3315686**

**34 Main Street, Calverton, Nottingham NG14 6FQ**

- 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 Miss Shread, STAMP Development Ltd for a full award of costs against Gedling District Council.
  - The appeal was in connection with the refusal of the Council to grant subject to conditions planning permission for proposed demolition of existing dwelling and erection of 3 retail units at ground floor with 8 apartments over.
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### Decision

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

### Reasons

2. Paragraph 030<sup>1</sup> 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 051<sup>2</sup> 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 officer's report recommended the granting of planning permission, as it was considered that the less than substantial harm identified in relation to designated heritage assets would be outweighed by public benefits. However, this recommendation was overturned by Members at the planning committee.
4. The applicant argues that there was a failure to substantiate each reason for refusal. In addition, Members ignored officer advice, and that this caused the prevention or delay in development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. The Council has not provided a response to the application for costs.
5. There are two reasons for refusal, firstly that the three-storey element of the proposal would result in less than substantial harm to the settings of the heritage assets, and secondly that the development's design would result in less than substantial harm to the settings of the heritage assets. In each case that harm would not be outweighed by public benefits.

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<sup>1</sup> Reference ID: 16-030-20140306

<sup>2</sup> Reference ID: 16-051-20140306

6. However, the term 'less than substantial harm', along with 'substantial harm', is one of two categories of harm identified in PPG<sup>3</sup> to be deployed in order to identify which policies in the National Planning Policy Framework (the Framework) should apply. The term 'less than substantial harm' does not in itself identify the reasons for that harm, which would be linked to a development's adverse effect on the significance of heritage assets.
7. There is a wealth of evidence from internal and external consultees set out in the officer's report that clearly and comprehensively sets out concerns in relation to designated heritage assets. As such, the officer's report could give the applicant some idea of where Members' concerns originated. However, it is not reasonable to expect the applicant to second-guess that harm or to have any certainty as to where and how the scheme failed.
8. Moreover, the development comprises two buildings, Block A which would be inside the conservation area, and Block B which would be outside. The second reason for refusal finds harm in relation to the development's design. It could be surmised that in referring to 'the development' this reason for refusal is concerned only with Block B. However, the lack of precision and ambiguity in this regard is also unhelpful to the applicant.
9. Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out that where planning permission is refused, the decision notice is required to state clearly and precisely the full reasons for refusal<sup>4</sup>. As set out above, the decision confirms that there is harm, but other than references to the three-storey block and the development's design, it does not clearly and precisely identify the sources of that harm. I conclude that there is a lack of specificity and clarity in the reasons for refusal. The reasons are incomplete, vague and generalised and do not assist the appellant in understanding the reasons behind the refusal. This amounts to unreasonable behaviour on the part of the Council.
10. The Council's appeal statement makes it clear that it has no objections to Block A in relation to heritage assets, but as noted above, this is not entirely clear from the Council's reasons for refusal. In any case the Council's appeal statement would not have been submitted until after the appeal was lodged.
11. With regard to the planning balance, the officer's report concludes that the harm arising to the heritage assets would be outweighed by public benefits. This is in line with the balance required to be undertaken by Paragraph 202 of the Framework. The weighing of public benefits against identified harm to heritage assets is a matter of planning judgement. At the committee meeting Members reached a different conclusion from officers, as they are entitled to do. As such, I am unable to conclude that the Council acted unreasonably in this regard. However, this does not alter my concerns in relation to the omissions in the decision notice which has led to the lodging of the appeal and associated wasted expense.

## **Conclusion**

12. I conclude that unreasonable behaviour amounting to wasted expense at appeal has been demonstrated. The application for an award of costs is allowed.

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<sup>3</sup> Paragraph 018 Reference ID:18a-015-20190723

<sup>4</sup> Paragraph 020 Reference ID:21b-020-20140306

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 Gedling Borough Council shall pay to Miss Shread, STAMP Development Ltd, 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. The applicant is now invited to submit to Gedling Borough 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.

*A Edgington*

INSPECTOR