



Costs Decision

Site visit made on 11 July 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Costs application in relation to Appeal Ref: APP/F2605/D/23/3320075 Walnut Cottage, Ash Close, Swaffham, Norfolk PE37 7NH

- 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 and Mrs Martin Overman for a partial award of costs against Breckland District Council.
 - The appeal was against the refusal of planning permission for new first floor extension, demolition, and associated works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. It is contended that the Council acted unreasonably by raising its concern with regard to the design of the proposal at a late stage, and in doing so, did not afford the applicant opportunity to amend the scheme to address these concerns.
4. Furthermore, the applicant contends that it was illogical for the Council to find that the scheme would have no adverse effect upon Swaffham Conservation Area, whilst also considering that it would detract from the character and appearance of the area more generally.
5. Whilst Paragraph 38 of the National Planning Policy Framework states that local planning authorities should approach decisions in a positive and creative way, and work proactively with applicants. It also advocates the use of pre-application discussions.
6. The evidence indicates that there was limited communication between the Council and applicant prior to a decision being made. Although the target date had been extended, this was in order to accommodate potentially delayed representations from an interested party. Ultimately, this was not necessary as the relevant comments had been received, and the Council advised the appellant that it would seek to determine the application in accordance with the original timeframe.
7. Other than this procedural matter, the evidence suggests that the Council was not forthcoming with its views with regard to the merits of the scheme. It was only after the applicant's representative contacted the Council to seek these views, the day prior to the original end of the period of determination, that concerns were set out. The Council issued its decision the following day.

8. Accordingly, the Council did not communicate its concerns until a point at which it was unlikely that meaningful negotiations would be able to take place, and it says it did not do so earlier as it considered that the scheme could not be acceptably amended.
9. Whilst this is unfortunate, it is unclear whether the applicant had attempted to seek the Council's views earlier in the consideration process, and there is no evidence before me to indicate that the applicant made any approach to the Council for pre-application advice.
10. It may have been advisable for the Council to indicate its concerns, along with the fact it did not consider that the scheme could be acceptably amended, at an earlier stage without requiring prompting to do so. However, given the evidence before me indicates that the applicant's representative did not appear to seek any kind of update themselves until towards the end of the period of consideration, and that there does not appear to have been an attempt to seek pre-application advice, I conclude that the Council's behaviour in this respect did not amount to being unreasonable.
11. The report provided by the Council sets out that the Historic Building Officer raised no objection to the proposal, but the conclusion of this report identifies that the proposal would be detrimental to the character or appearance of the Conservation Area, and this reflects informal advice provided to the applicant's representative prior to the determination of the application. However, the given reasons for refusal only refer to the effect of the proposal upon the character and appearance of the area more generally, and do not refer to its effect upon the Conservation Area at all.
12. I acknowledge the Council's position that the effect of the proposal upon the Conservation Area, and upon the character and appearance of the area more generally are not necessarily symbiotic. As the significance of a Conservation Area can be derived from a number of factors, I accept that there are circumstances where this could be the case.
13. However, I do not agree that this is the case in this instance, nor does the Council's report offer any explanation or assessment of this. Overall, the Council's position on the effect of the proposal upon the significance of the proposal upon the character or appearance of the Conservation Area is, if not illogical, nevertheless unclear.
14. Notwithstanding this, what is clear is that the Council had concerns with regard to the effect of the proposal on the character and appearance of the area more generally, these are substantiated, and the applicant would have had to address this matter in any event. There is nothing before me to suggest that the Council would not have refused permission on this basis, had its approach to addressing the effect of the proposal upon the Conservation Area been clearer. Accordingly, in addressing this reason for refusal, the applicant has not incurred unnecessary or wasted expense in the appeal process.
15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Harding

INSPECTOR