



Costs Decision

Hearing held on 15 August 2023

Site visit made on 15 August 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7TH SEPTEMBER 2023

Costs application in relation to Appeal Ref: APP/P5870/C/21/3289021 Land at The Old Forge Site, High Street, Carshalton SM5 3AX

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Dr. Adam Islam of ASI Asset Management Limited for a partial award of costs against The Council of the London Borough of Sutton.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a building on the Land.
-

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. The applicant claims the Council acted unreasonably in a substantive and a procedural sense by claiming in its Hearing Statement that the development the subject of the enforcement notice harms heritage assets other than the Carshalton Village Conservation Area (CA). The enforcement notice does not refer to any such harm and the Council's Officer Report relating to another 3-storey building at the appeal site did not consider the impact of that development on any other heritage assets.
4. Specifically, paragraph 6.12 of the Council's Hearing Statement refers to the appeal site being within the close setting of Grade II listed buildings at 1, 5 to 7, and 16 to 20 High Street, locally listed buildings at The Grove and The Nest, and unlisted buildings of merit at 1 to 4 The Green and 48 to 84 High Street. Paragraphs 6.18 and 6.19 of the Council's Hearing Statement refer to harm claimed to be caused to the settings of those buildings, and paragraph 6.20 refers to harm being caused to designated and non-designated heritage assets.
5. The Council has claimed that it simply pointed out specific buildings of note within the CA, which form part of and contribute towards the character of the CA. It is claimed that it is irrelevant that the notice did not refer to the impact of the development on those other heritage assets, because they are not separated, and it would have been impractical for the notice to have referred to them.

6. During the Hearing the Council clarified that it considered the development only harmed the setting of 1 to 4 The Green, in addition to the CA. It was also briefly explained that references in its Hearing Statement to the settings of other heritage assets were made with respect to the overall impact of the development on the CA, which forms part of the settings of those other heritage assets.
7. The applicant had submitted a heritage statement¹ to the Council as part of an application seeking pre-application advice prior to the submission of the Council's Hearing Statement. The heritage statement identified all heritage assets which the applicant's heritage consultant considered could have been affected by the development² and scoped out all other heritage assets which were considered unlikely to experience any effects to their heritage significance³.
8. Following receipt of the Council's Hearing Statement, the applicant sought advice with regard to the impact of the development on the setting of 1, 5 to 7, and 16 to 20 High Street, and The Grove. That advice is set out in Appendix 3 of the applicant's Final Comments⁴, and advised that the appeal site was considered a non-contributing element of the settings of those heritage assets. The same document also provided other final comments on the Council's Hearing Statement. The matters were also addressed in the appellant's other final comments submissions.
9. It was reasonable for the applicant to conclude that the Council's Hearing Statement alleged harm had been caused to the settings of the other heritage assets mentioned above, in addition to the CA. Prior to reading the Council's Hearing Statement, the applicant was unaware that such harm was alleged by the Council. Indeed, during the Hearing, the Council only alleged harm to the setting of 1 to 4 The Green based on the claimed poor quality of the development and its proximity to that other heritage asset.
10. The Council would have been aware of the heritage statement, which sought to identify and assess any harm the development may have been considered to have caused to any heritage assets. The Council's Hearing Statement did not go into much detail when it alleged harm had been caused to the settings of those other heritage assets, but it went beyond simply pointing out specific buildings of note within the CA. It explicitly stated the development caused harm to the settings of the above heritage assets. This was not alleged in the enforcement notice and contradicted the Council's position confirmed during the Hearing, other than with regard to 1 to 4 The Green.
11. I therefore conclude that the Council acted unreasonably in claiming the development caused harm to the settings of heritage assets other than the CA and 1 to 4 The Green in its Hearing Statement. Specifically, references to alleged harm caused to the settings of 1, 5 to 7, and 16 to 20 High Street, and The Grove in the Council's Hearing Statement were unsubstantiated and caused the applicant to incur unnecessary expense in the appeal process. This is on account of the advice the applicant then needed to seek in respect of that

¹ Pre-Application Heritage Statement by Built Heritage Consultancy, dated December 2021

² 1 to 4 The Green, The Nest, and 48 to 84 High Street

³ Including 5 to 7, 16 to 20, and 30 to 34 High Street

⁴ Appellant's Final Comments – Heritage Appendix, by Built Heritage Consultancy, dated 11 April 2022

alleged harm and the need for the applicant to address those matters in their Final Comments submissions.

12. The advice set out in sections 1 and 3 of Appendix 3 of the applicant's Final Comments provide heritage final comments in respect of other points made in the Council's Hearing Statement. The Council's unreasonable behaviour did not therefore cause the applicant to incur unnecessary or wasted expense in the appeal process in relation to the whole of Appendix 3 of the applicant's Final Comments. The Council's unreasonable behaviour only caused the applicant to incur unnecessary expense with regard to sections 2, 4, and 5 of that document, and paragraphs 2.13 to 2.20 of the appellant's Further Comments⁵.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the alleged harm the Council claimed the development caused to the settings of 1, 5 to 7, and 16 to 20 High Street, and The Grove at paragraphs 6.18 to 6.20 of its Hearing Statement and a partial award of costs is therefore warranted.

Costs Order

14. 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 The Council of the London Borough of Sutton shall pay to Dr. Adam Islam of ASI Asset Management Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in obtaining the advice set out in sections 2, 4, and 5 of the document titled 'Appellant's Final Comments – Heritage Appendix', by Built Heritage Consultancy, dated 11 April 2022, and paragraphs 2.13 to 2.20 of the document titled 'Further Comments', by Maddox Planning, dated April 2022; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to The Council of the London Borough of Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Douglas

INSPECTOR

⁵ By Maddox Planning, dated April 2022