
Costs Decision

Site visit made on 23 January 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 02 February 2024

**Costs application in relation to Appeal Ref: APP/J1725/W/23/3323001
106 Brockhurst Road, Gosport, Hampshire PO12 3DG**

- 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 Arthur Peach for a full award of costs against Gosport Borough Council.
 - The appeal was against the decision of the Council to refuse planning permission for the demolition of existing building and construction of detached building to form 5 No. Flats with associated parking, cycle and refuse storage (Amended Application to 21/00248/FULL) (as amended by plan received 04.11.22).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
3. The basis of the Appellant's application for costs is that the Council attributed undue weight to its assertion that the building proposed to be demolished was deemed to be a non-designated heritage asset. It is contended that this approach prevented constructive engagement with the Appellant to secure the removal of a General Industrial B2 use in a dilapidated building from the heart of a high-density residential area that would have secured the achievement of new dwellings on previously developed land in an accessible, sustainable location. Consequently, the Appellant is of the view that planning permission was withheld for development which should have been permitted and that the Council's approach in determining the application constitutes unreasonable behaviour that has directly resulted in the Appellant incurring the unnecessary expense of this appeal.
4. By way of background, an application was made to Historic England for consideration of the potential of the building to be given statutory listing. Historic England advised in October 2021 that the application would not be taken forward to a full assessment and that the building would therefore not be added to the 'List'. Furthermore, the "Local List of Heritage Assets in Gosport Borough" was last amended on 26th August 2022 and the appeal site was not

- included. Consequently, the Appellant is of the view that the appeal proposal would, by definition, not lead to the loss of a non-designated heritage asset.
5. In considering whether the Council's actions were reasonable in determining that the building was deemed to be a non-designated heritage asset, I have had regard to the advice provided in the PPG (Paragraph: 040 Reference ID: 18a-040-20190723). Amongst other matters, this identifies that in some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications.
 6. Although it may have been helpful for the building to have been included on the "Local List of Heritage Assets in Gosport Borough", in light of the advice provided in the PPG, I consider the fact that the building was not included on the "Local List" does not prejudice the Council's position in determining the building to be a non-designated heritage asset. In my view, the Council were quite entitled to identify the building as being a non-designated heritage asset as part of the decision-making process on the planning application.
 7. The fact that the building may not be considered to be appropriate for statutory listing by Historic England does not mean that it has no heritage significance. The heritage significance of the building was clearly articulated in the Officer Report and in the consultation response by the Council's Conservation Officer.
 8. Furthermore, the previous decision of the Council to refuse planning permission for demolition of the building and redevelopment of the site (Ref. 21/00248/FULL) also identified the impact on the non-designated heritage asset in reason for refusal No. 6. That reason for refusal is also similarly worded to reason for refusal No. 6 in the Council's Decision Notice (Ref. 22/00280/FULL) in the appeal proposals before me.
 9. Therefore, the previous application demonstrates that the Council has been entirely consistent in its assessment of the building as a non-designated heritage asset. In my view, the Appellant would have been reasonably aware of the Council's position regarding the heritage status of the building as a consequence of the previous decision. Therefore, the Appellant had the opportunity to address the Council's concerns in the submission of the appeal proposals before me.
 10. Paragraph 200 of the National Planning Policy Framework (the Framework) sets out that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. It further states that the level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
 11. Although the planning application was accompanied by a "Planning, Heritage and Design and Access Statement", the heritage information provided therein merely refers to the views of Historic England in that the building does not have the requisite special architectural and historic interest to be listed. It cannot be reasonably argued that this would constitute an assessment of the significance of the non-designated heritage asset or support the demolition of the structure without consideration of the retention of some of its relevant features.

12. Furthermore, Policy LP13 of the Gosport Borough Local Plan 2011 -2029 (the Local Plan) sets out that planning permission for a development which could result in harm to, or the loss of, a locally important heritage asset will only be granted if it can be demonstrated that the benefits of the development outweighs the asset's historical or architectural significance. In this case, no evidence was presented to the Council, or in my consideration of this appeal, regarding any assessment of the significance of any heritage asset affected. In such circumstances, it cannot be reasonably argued that the Council attached undue weight to its assertion that the building proposed to be demolished was contended to be a non-designated heritage asset.
13. Accordingly, I do not find that the Council acted unreasonably in maintaining its position that the proposed development did not demonstrate that the loss of the non-designated heritage asset was necessary as no evidence was provided during the determination of the application, or in this appeal, that would reasonably constitute a heritage appraisal within the context of paragraph 200 of the Framework. Reason No. 6 for the refusal of planning permission adequately referred to the appropriate policy contained in the development plan that the proposal was in conflict with. In the absence of any appropriate heritage appraisal, I have found that the Council had reasonable concerns about the harm to the non-designated heritage asset which justified its decision. Therefore, in my view, the appeal could not have been avoided.
14. The effect on the non-designated heritage asset was one of seven reasons identified by the Council for the refusal of planning permission for the appeal scheme. Therefore, the effect on the non-designated heritage asset was not the sole determinative reason in the Council's decision to refuse planning permission. In addition to the effect on the non-designated heritage asset, I also concur with the Council that the appeal proposal would have unacceptable impacts on the character and appearance of the surrounding area and on living conditions, particularly those of the future occupiers of the proposed flats.
15. I have taken into account the Appellant's view that the Council should have taken a more positive approach in the determination of the planning application that reflects the presumption in favour of sustainable development as set out in the Framework and that the Officers' resistance to residential development of the site was unreasonable behaviour. However, the Officer Report clearly identifies that the redevelopment of the site for residential purposes would not be inappropriate provided that the development accords with the relevant policies of the Local Plan and the Framework.
16. In considering the above approach, there is also a degree of obligation on behalf of applicants to ensure that development proposals accord with the relevant Local Plan and Framework policies. In addition to the concerns regarding the effect on the non-designated heritage asset, I also found conflict with the relevant Local Plan policies relating to the unacceptable and adverse impacts of granting planning permission upon the character and appearance of the surrounding area and the effect on living conditions. These matters led to my conclusion that these impacts would significantly and demonstrably outweigh the benefits associated with the appeal proposals.
17. In these circumstances, I have no compelling evidence to suggest that the Council's approach was unreasonable in the consideration of the planning application. The principle of the redevelopment of the site was accepted by the

Council but there were clear material considerations, including the effect on the non-designated heritage asset, that justified the Council's position in determining that planning permission should be refused.

18. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR