



Costs Decision

Site visit made on 24 January 2024

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2024

Costs application in relation to APP/U2750/W/23/3331547

Low House Farm, Timble, Otley, North Yorkshire LS21 2NN

- 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 & Mrs R Aspbury for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of planning permission for development originally described as 'rear ground floor extension and rear dormer including internal alterations'.
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Costs application in relation to APP/U2750/Y/23/3331780

Low House Farm, Timble, Otley, North Yorkshire LS21 2NN

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs R Aspbury for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of listed building consent for works originally described as 'rear ground floor extension and rear dormer including internal alterations'.
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Decision

1. The applications for an award of costs are approved.

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 put to me that the Council, prevented or delayed development that should have been permitted, provided information that is shown to be manifestly inaccurate or untrue, not reviewed their case promptly following the lodging of an appeal against the refusal of planning permission and provided vague, generalised or inaccurate assertions.
4. The crux of the applicants' case is that the Council did not recognise that the converted barn which forms part of Low House Farm was specifically excluded from the listing. As such, the applicants contend that the Council incorrectly assessed the applications. Moreover, it is put to me that the Council incorrectly advertised the application, did not alter the description of development following amendments, failed to assess the proposal's impact on the Conservation Area and provided generalised and inaccurate assertions of the impact. The Council has defended itself in relation to these matters.

5. The Council acknowledge that the Officer's Report incorrectly identifies the barn to be Grade II listed but contends that the reason for refusal refers to "the listed building and its attached barn". However, the reason for refusal also states that the "addition of an infill extension along the rear elevation will result in the original rear elevation of the listed building being fully concealed and as such is seen to be harmful....". However, the rear extension proposed would conceal part of the barn's original rear elevation not the Listed Building. In this regard, the evidence before me leads me to conclude that an assessment was made on an incorrect understanding of the appeal premises.
6. There is no dispute that Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) was relevant when assessing the proposals. However, the proposals were still unreasonably refused, in part, based on an inaccurate assertion of the proposed extension's physical relationship with the listed building and thus its associated effects to its significance. Moreover, the Council's decisions and Officer Report refers to Section 72(1) of the Act but there was no assessment made of the proposal's impact on the Conservation Area leading to ambiguity regarding the Council's concerns.
7. The Council had an opportunity to review their case during the appeals process and provide evidence to substantiate their concerns. However, the Council chose not to do so with the only response being in relation to the applications for an award of costs.
8. There is evidence of a misinterpretation of a fundamental aspect of the listed building and the scheme's relationship to it and the Council did not substantiate its position during the appeals. As such, it has not been demonstrated that the appeals could not have been avoided or matters of contention could not have been narrowed. Accordingly, and given my findings in the appeal decisions I find that the unreasonable behaviour has led to wasted expense as it has prevented and delayed development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
9. The procedural errors referred to by the applicants, in relation to the description of the development/works and the advertisement of the scheme, have not caused wasted expense in the appeal process. Moreover, from the evidence before me, the Council sought to negotiate and work with the applicants proactively during the applications. However, these matters do not alter my findings in relation to the Council's assessment of the amended plans and its relationship to, and associated effects on, the heritage assets.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

Costs Order in relation to APP/U2750/W/23/3331547

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

North Yorkshire Council shall pay to Mr & Mrs R Aspbury, 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 applicants are now invited to submit to North Yorkshire 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.

Costs Order in relation to APP/U2750/Y/23/3331780

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Yorkshire Council shall pay to Mr & Mrs R Aspbury, 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 applicants are now invited to submit to North Yorkshire 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.

Mr R Walker

INSPECTOR