



Costs Decision

Site visit made on 2 January 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2024

Costs application in relation to:

Appeal A Ref: APP/C1760/W/23/3321709

Appeal B Ref: APP/C1760/Y/23/3321707

Shorts Farmhouse, Scallows Lane, West Wellow, Romsey SO51 6DX

- In respect of Appeal A, 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).
 - In respect of Appeal B, 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 Test Valley Borough Council for a partial award of costs against Mr Daniel Baggot.
 - The appeals were against the refusal of planning permission for development described as 'single storey rear extension and external alterations' and the refusal to grant listed building consent for works described as 'single storey rear extension and external alterations'.
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Decision

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

Procedural Matters

2. The application for a partial award of costs was received after the Inspectorate's deadline for final comments. In accordance with guidance on the timing of costs applications on planning appeals set out in the Planning Practice Guidance ('the PPG'), it is therefore treated as a 'late' application. However, the Planning Inspectorate's letter of 7 February 2024 explained to the parties that, having regard to the circumstances in this case, the Secretary of State had exercised discretion to accept the late application for consideration.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the PPG advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, relating to the planning merits of the appeal.
4. The Council's second reason for refusal of each of the planning application and the associated application for listed building consent related, in essence, to inadequate survey and method statement information to consider the effect of alterations to the building's pebbledash render exterior.

5. The Council state that the appellant was advised of the need for additional information at application stage and that it suggested the applications be withdrawn for the appellant to engage with the pre application service. The appellant has not disputed this account. However, the fact that the appellant elected not to follow this advice is not in itself unreasonable behaviour.
6. In making the appeals, the appellant sought to provide additional information to address the Council's concerns about the effects of alterations to the pebbledash render, including a 'Mortar Analysis Test Report No. 5579'. I note advice in the PPG advising that before making any appeal the applicant should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain planning permission. In this case however, the additional information did not alter the proposal from that considered by the Council and interested parties at the application stage, and I do not consider it was necessarily unreasonable for the appellant to seek to address the Council's concerns.
7. That said, it became clear in response to my enquiries that 'render condition survey sheets' and 'sample analysis sheets' that were referred to in the appellant's final comments had not in fact been submitted as part of the appeal package. In view of their potential materiality to the matters before me, I exercised my discretion to accept the render condition survey sheets and sample analysis sheets as 'late evidence' and provided the Council an opportunity to comment on this evidence.
8. Even with the late evidence, I have ultimately agreed with the Council that there is insufficient information to determine that alterations to render would be acceptable. However, the adequacy of the submitted evidence is essentially a matter of judgement. The appellant's application stage submissions did include some information in respect of the removal of render, and I am not persuaded that it was inevitable that the appeal would have no reasonable chance of success, even without the further submissions made at appeal stage, late or otherwise. Nor is there compelling evidence before me to suggest that the appellant deliberately concealed relevant evidence at either the application or appeal stage.
9. Nevertheless, the PPG is clear that introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen may give rise to an award of costs against an appellant. The late evidence sought to confirm and clarify information that had already been provided to the LPA in respect of the render condition, but it was nevertheless of a substantive nature. In my view, the appellant behaved unreasonably in submitting fresh and substantial information in respect of the render at a late stage in the appeal process. The late submission of the information has resulted in a delay to the determination of the appeals in order to allow the Council an opportunity to consider it.
10. Furthermore, the unreasonable behaviour by the appellant has directly caused the Council unnecessary and wasted expense in the appeal process in reviewing and responding to the late evidence in respect of the second reason for refusal on both appeals and making the costs application, the need for which arose as a result of the appellant's unreasonable behaviour.

11. The omission of the late evidence from the initial submission may have been a genuine oversight on the part of the appellant, but I do not consider that to be a compelling mitigating factor.
12. For these reasons, I find that unreasonable behaviour by the appellant resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial award of costs is warranted.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972, Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 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 Mr Daniel Baggot shall pay to Test Valley Borough Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in connection with reviewing and responding to the late evidence submitted by the appellant after the final comments stage and making the costs application.
14. The applicant is now invited to submit to Mr Daniel Baggot, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Bowyer

INSPECTOR