



Costs Decision

by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2024

Costs application in relation to Appeal Ref: APP/R0335/D/23/3327841 Greenacres Farm, 23 Scotland Hill, Sandhurst, Bracknell Forest GU47 8JR

- 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 Mrs Carolyn Stanley for a full award of costs against Bracknell Forest Council.
 - The appeal was against the refusal of planning permission for development described as, "Retrospective application for outbuilding to side garden of Listed Building. Application is the same as 22/00736/LB".
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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. The PPG sets out examples of types of behaviour which may give rise to an award of costs against a Council. These include failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact; and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The PPG also states that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The Council's planning officer took a different view on the effects of the development than the heritage officer and explained the reasons for doing so in an officer report. The heritage officer noted harm to the setting of the listed building caused by the outbuilding but considered that this harm could be reduced to an acceptable level through a materials condition. The planning officer agreed that there was harm to the setting of the listed building, but also identified that there was harm to the character and appearance of the host dwelling due to the scale and siting of the development. Therefore, harm was identified beyond just the heritage impacts of the development. As a result, the planning officer concluded that a materials condition would not reduce the overall harm to an acceptable level.
6. The heritage officer also noted in their comments the potential for greater heritage harm if the existing hedge were to be removed. The matter of whether the hedge would be retained, or could be required to be retained, would in my

experience usually be a matter considered by a planning officer in their wider remit considering all planning matters relevant to the application. Therefore, it is not unusual that the heritage officer would not have addressed this issue in their comments, and it was reasonable for the planning officer to consider this in their overall assessment.

7. While the applicant may not intend to remove the hedge, a future occupier could because it is not protected in any way. As the outbuilding is a well-built, permanent structure it was reasonable for the Council to consider its long-term effects, including if the hedge were removed.
8. The parties dispute whether its retention could have been controlled by planning condition. Landscaping conditions are commonly used in many circumstances but, as the parties note, they must meet the 6 tests for conditions set out in the National Planning Policy Framework. A condition to retain the hedge would need to be precise and enforceable, therefore its wording would need to be clear and unambiguous.
9. To provide the visual screening the Council considered was required, a condition might well need to specify the height and density at which the hedge was required to be maintained. A hedge is a living entity however, and any condition would need to allow for growth. Retention and maintenance to such a specification in perpetuity would also naturally require replacement of plants within the hedge over time, particularly when the hedge reached an age at which it starts to decline.
10. It is difficult to see how such a condition could be worded so that the requirements were not unduly onerous and therefore unreasonable. Indeed, I note that neither party has provided me with suggested wording for such a condition. Therefore, it was not unreasonable for the Council to conclude that a condition to retain the hedge would not be reasonable or enforceable.
11. In respect of new planting indicated on the submitted plans, the Council clearly set out its case as to why it was not convinced that this would effectively mitigate the harm identified, particularly given the lack of detail provided. Again, therefore, this was not unreasonable behaviour. Moreover, given the importance given to the conservation of heritage assets and good design in local and national policy, it was not unreasonable of the Council to take the view that the outbuilding should not need to be hidden from view by planting.
12. The Council's planning assessment is somewhat mixed up, as it concluded on heritage harm and weighed that against public benefits (the 'heritage balance') before considering whether mitigation measures would reduce the level of harm. Nevertheless, the Council clearly did assess the possible mitigation before reaching its final conclusion on the development. Furthermore, even if the mitigation had been considered earlier on, the Council is clear that it would still have found harm due to the scale of the outbuilding.
13. Furthermore, as no public benefits were identified during the application process, it is unlikely that the outcome of the heritage balance would have been different if the suggested mitigation had been taken into account before the balancing exercise was undertaken. Therefore, in this context I do not consider there was unreasonable behaviour by the Council. In any event, the Council would still have refused permission and an appeal would potentially still have been submitted.

14. The Council outlines the reasoning behind its refusal in the officer report and clearly relates these reasons to relevant development plan policies. These issues are matters of planning judgement, and although I have reached a different conclusion to the Council on the appeal, I consider that it has substantiated its reasoning and reasons for refusal and justified why it reached a different conclusion to the heritage officer. Therefore, the Council did not make vague, generalised or inaccurate assertions about the impact of the development.
15. The Council's officer report explains why it does not consider landscaping conditions to be reasonable or provide effective mitigation in this case, and why a materials condition would not resolve issues with the development. Again, this is a planning judgement and while it could have been more clearly explained in terms of the hedgerow retention, I have reached a similar conclusion on that matter. Therefore, this was not a case where the Council refused planning permission on a planning ground capable of being dealt with by conditions.
16. The Council has provided evidence of engagement with the applicant during the application process. Whilst the applicant may have disagreed with the stance the Council took with regards to conditions and mitigation measures, it is evident that the Council did provide requested information and allow amendments and discussion during the application process. No unreasonable behaviour has therefore been demonstrated in this respect.
17. The retrospective nature of the development and a ministerial statement about this matter are referred to by the Council. It concluded that there was no evidence of an intentional breach of planning control, then ascribed limited weight to the retrospective nature of the development as a material consideration. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. It is for the decision maker to decide what weight is to be given to the material considerations in each case. Therefore, while the Council's reasoning for the weight to be given to this matter could have been clearer, it was not unreasonable behaviour.
18. In any event, irrespective of the relevance of the ministerial statement, the Council's officer report set out its reasons for refusal in accordance with the development plan, with regards to character and appearance and heritage matters. It did not use the retrospective nature of the development to refuse permission for the development and this was not a determinative factor in the Council's final decision. As a result, this was not unreasonable behaviour, and as the application would still have been refused, an appeal might still have been submitted.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

L McKay

INSPECTOR