The Planning Inspectorate

Costs Decision

Site visit made on 8 May 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2024

Costs application in relation to Appeal A: APP/J1535/D/23/3330408 and Appeal B: APP/J1535/Y/23/3330406
Netherhall Farm, Netherhall Road, Roydon, CM19 5JP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and 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 P Taylor Ltd for a full award of costs against Epping Forest District Council.
- The appeals were against the refusal of planning permission and listed building consent for the removal and replacement of existing 1.7m high metal gates with traditional timber and new brick support piers. Erection of new boundary wall up to 1.0m high. (Council Refs: EPF/1424/23 and EPF/1430/23).

Decision

1. The appellant's application for an award of costs against the Council is allowed in the terms set out below.

Procedural Matters

2. The Applicant's costs claim relates to the Council's determination of applications for both Planning Permission (Ref: EPF/1424/23) and Listed Building Consent (Ref: EPF/1430/23). Although the legislation giving a route to making a cost application is different, the regime is the same.

Reasons

3. Paragraph 030 of the Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Examples of the type of behaviour that may give rise to an award is at paragraphs 47 (procedural) and 49 (substantive). The lists are non-exhaustive.

4. The Applicant's claim of the Council's unreasonable behaviour can be summarised twofold. Firstly, a failure to undertake a balanced assessment of the proposal in relation to national and local planning policy. Secondly, by misunderstanding the height of the gates.

Failure to undertake a balanced assessment

5. The Council's Officer Reports[1] are brief. They include references to the development plan policies that are said to have been applied. The policies are not directly referenced within the scheme assessment but are included within the decision notice.

6. Comments from the Conservation Officer are copied into the report, providing some information about the Council's views on the significance of the heritage assets. There is no evidence to support the Appellant's view that their Heritage Statement was not paid due regard.

7. The focus of the Officer's comments is then on the height of the gates, with no further assessment within the report about the effects of the proposal and on which assets. It can reasonably be assumed from the report that the Council is making a finding of harm, but the reasoning behind the effects on the assets is absent and leaves considerable uncertainty.

8. The main controversial issues and the Council's conclusions on them are not, therefore, clear. While every possible consideration does not need to be addressed in a report which is aimed at the informed reader, 'as per the Conservation Officer's comments' falls well short of the standard of clarity needed. This is made up for, somewhat, by the Council's appeal statement of case which provides a level of greater clarity about their concerns.

9. Critically, however, the National Planning Policy Framework (the Framework) provides a clear approach where a finding of substantial (paragraph 207) or less than substantial harm (paragraph 208) is made in relation to a heritage asset.

10. The relevant paragraphs in the previous version of the Framework are mentioned in a reason for refusal. However, there is nothing within the officer reports or subsequent statements submitted at appeal to suggest that the Council has applied the approach in the Framework. In the case of less than substantial harm this would be weighing the harm against the public benefits of the proposal. Paying regard to the conclusions that I reach in relation to the Appeals, had the balance been undertaken there is a reasonable possibility that the outcome may have been different. This would have saved the Applicant the wasted expense of going to appeal.

11. For the above reasons, on the balance of probabilities, the Council failed to undertake a balanced assessment of the proposal. Unreasonable behaviour is therefore demonstrated. The result of the unreasonable behaviour led to wasted expense in bringing forward the appeals.

Misunderstanding the height of the gates

12. The Conservation Officer's comments that the height of the gates 'appeared to be approximately 1 metre in height' is contained in initial advice. It is reasonably clear from the paperwork that this advice was overtaken by subsequent assessment (including a site visit).

[1] There are two reports that cover both applications. They are headed differently but the contents are substantively the same.

13. The Council accepts that the statement was incorrect and there is no evidence that the error fed through into the outcome of the Council's decision and the officer report references subsequent advice.

14. The Council and the Appellant disagree over the measurements, which I address in my appeal decisions. However, on the balance of probabilities, this matter does not of itself amount to unreasonable behaviour.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972, Schedule 6 of the Town and Country Planning Act 1990 as amended, 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 Epping Forest District Council shall pay to Mr P Taylor, the full 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.

16. Mr P Taylor is now invited to submit to Epping Forest District 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.

D R McCreery

INSPECTOR