



Costs Decision

Site visit made on 9 May 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs application in relation to Appeal Ref: APP/J0405/W/23/3323959 Springhill Farm, Pond Cottage East, Cuddington Road, Dinton, Buckinghamshire HP18 0AD

- 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 Eccles for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for demolition of existing house and erection of new 5 bedroom house with new carport.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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 provides a non-exhaustive list of criteria that may amount to unreasonable behaviour on procedural and substantive grounds. The application for costs is set against several of these criteria.
4. The substantive issues cited by the applicant focus on the process by which the Council identified and recorded the site as a non-designated heritage asset (NDHA) and the subsequent assessment of the proposed development in light of this.
5. Whilst the PPG advises on the steps that local planning authorities may take to identify and record NDHAs, there is no prescriptive process for this. As such, cases involving NDHAs can vary significantly in their nature. The Council's approach to the identification and recording of NDHAs, and its recent creation of a Local Heritage List (LHL), is addressed in the accompanying appeal decision.
6. Because the Council is currently refining its process regarding NDHAs, and given the inherent flexibility of the subject, the current approach the Council takes to such cases may exhibit a degree of variation from case to case. Moreover, each case must be considered on its own merits, and the Council reaching a different decision on a different proposal does not necessarily amount to unreasonable behaviour. I acknowledge the case of the demolition of a public house referenced by the applicant, but I am not persuaded there are

sufficient parallels with the appeal proposal to demonstrate unreasonable behaviour through inconsistency of approach. For the same reason, the case law cited by the appellant does not persuade me the Council has acted unreasonably in its handling of the application.

7. The applicant considers the Council's evidence used to identify and record the appeal site as a NDHA and to assess the application was not sound and was based on vague, generalised and inaccurate assertions. The parties disagree on various matters concerning the history of the site and its historic significance, and it is evident that there are gaps in the information available to fully document its history. As such, disagreements on some matters are inevitable, and I am not persuaded that the Council has acted unreasonably in respect of this issue.
8. I am provided with conflicting evidence from both main parties regarding the process by which site visits were undertaken. Given the limited substantive details available to document this process, I am not persuaded that unreasonable behaviour has been evidenced in this regard.
9. The applicant considers the proposal represents a development that should clearly be permitted, having regard to the development plan, national policy and other material considerations. In allowing the appeal, I have ultimately arrived at a different conclusion to that of the Council. Nevertheless, as set out above and in the accompanying appeal decision, the main issues were finely balanced. The assessment of the proposal was therefore a matter of planning judgement, and I am satisfied that the Council arrived at their decision following proper process and in a reasonable manner.
10. The procedural issues cited by the applicant refer to several matters. It is alleged that the Council has provided and used information that is shown to be manifestly inaccurate or untrue. This matter is linked to the previously discussed finely balanced issues in determining the proposal. Although I acknowledge that some factual inaccuracies were highlighted to the Council by the applicant, particularly in relation to early iterations of feedback from the Council's heritage team, I am not persuaded that these issues were critical to the extent that they would have changed the Council's decision on the application. As previously addressed, although I have ultimately disagreed with the Council's decision, I consider the process to reach a decision was based on reasonable evidence.
11. Because of the lack of substantive evidence, I can give very limited weight to any verbal discussions with Council officers. Accordingly, I do not consider unreasonable behaviour has been evidenced in this regard.
12. The Council's statement of case cites a passage of the National Planning Policy Framework (the Framework) referring to the *deliberate neglect* of a heritage asset. Whilst the purpose of the Council's reference to this passage is open to interpretation, my reading is simply that it seeks to draw attention to the provisions of the Framework, rather than making a strict accusation that the applicant has deliberately neglected their home. As such, I do not find this to evidence unreasonable behaviour.
13. The applicant considers the Council behaved unreasonably by adding the site to the LHL without notification or notice, and against the professional advice

provided by the applicant. The Historic England Advice Note¹ referenced in the PPG, notes that owners should be advised of the intention to locally list an asset, including an explanation of the planning implications, and it is important to put in place a process for handling requests not to designate.

14. In response to this matter, the Council notes that the site has not yet been added to the LHL, it has only been nominated for consideration. In this respect, I am mindful that the process for local listing is not statutorily laid out, and whilst I can appreciate the applicant's concerns, I do not find this to sufficiently demonstrate unreasonable behaviour.
15. The applicant refers to the Council's decision to place a tree preservation order (TPO) on the site in response to the proposal. Having regard to the issues relevant to the appeal as a whole, the application was not refused on the basis of trees and the TPO would not impact on the ability of the development to proceed. Accordingly, I do not find the imposition of the TPO has caused the applicant to incur unnecessary or wasted expense in the appeal process.
16. In summary, the evidence referred to above sets out the applicant's claim for costs against the Council in both substantive and procedural terms. In allowing the appeal I have arrived at a different conclusion than that of the Council. Nevertheless, although there are clear issues in dispute between the main parties, the main issues in the case were finely balanced and matters of planning judgement. As such, I am satisfied that none of the criteria amounting to unreasonable behaviour as set out in the PPG have been met.

Conclusion

17. Based on the information before me, I find no unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated, as set out in the PPG. The application for an award of costs is therefore refused.

P Storey

INSPECTOR

¹ Local Heritage Listing: Identifying and Conserving Local Heritage. Historic England Advice Note 7 (Second Edition)