



Costs Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2024

Costs application in relation to Appeal Ref: APP/U2750/W/24/3341906 Old Manor Stables, Back Lane, Barkston Ash, Nr Tadcaster, LS24 9PL

- 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 Alison Mason for a full award of costs against North Yorkshire Council.
- The appeal was against the refusal of planning permission for a development described as: 10 x 6 shed to house garden equipment to maintain land on the property.

Decision

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

The submissions for Alison Mason

2. The costs application was made orally at the hearing.
3. The costs application is predicted on both procedural and substantive grounds.
4. The appellant stated that the Council failed to co-operate with them, in particular with regard to the matter of curtilage and the merits of the proposal. It was also stated that the Council appeared to be unaware of relevant case law, particularly *Egerton v Taunton Deane Borough Council* [2008] EWHC 2752 (Admin) and *R (oao) Hampshire CC v Blackbushe Airport Ltd* [2021] EWCA Civ 398 and other cases in a document produced by the appellant in response to the Council's Appeal Statement of Case. The Council declined a copy of this document when offered.
5. It was also claimed that Council officers did not respond to requests for meetings and did not discuss the response of its Conservation Officer to the consultation on the planning application with them.
6. On the substantive grounds, the costs application is made on the basis that the Council delayed development which should clearly have been permitted; failed to produce evidence to substantiate the reason for refusal; made vague generalised and/or inaccurate assertions about the proposals impact; and acted contrary to, or did not follow, well established case law.
7. It was contended that the Council had been made aware by the appellant of the relevant case law and the Historic England Guidance on Listed Buildings and Curtilage.
8. It was stated that the Council had contradicted itself at the hearing in accepting that visibility from the public domain was a key consideration in determining

the effect on the character and appearance of an area when the building is not visible from the highway or other public land. It was further stated that there is a contradiction in the Council agreeing that there was no effect on the setting of Barkston House yet contending an effect on the setting of Turpin Hall Farm.

9. It was asserted that in the light of the above that the Council had consequently applied the wrong policies in determining the application.
10. It was also stated that, in the event that it is held that the appeal site is within the curtilage of a listed building, the Council has applied the wrong policies as there is no intervisibility between the appeal site and the principal building and has not articulated how the appeal site contributes to the setting of the principal building and how the shed negatively impacts on that contribution.
11. It was contended that it should have been obvious to the Council that some form of external storage would be necessary for the converted buildings and that there were several opportunities to require something appropriate to be provided.
12. It was stated that initially the appellant had accepted the Council's position in respect of the curtilage listing but when they had looked further into it had concluded that there was a need to challenge this.

The response by North Yorkshire Council

13. The response was made orally at the hearing.
14. The Council stated that the comments in respect of requested meetings were in relation to the application to convert the barn buildings and not in respect of the appeal proposal. It stated that in respect of the current appeal it has co-operated with the appellant and met all the relevant deadlines.
15. It was also stated that the appellant had previously accepted the position in respect of curtilage listing through making listed building consent applications in respect of the conversion works to the barns and a planning for the appeal proposal. It is only through the present appeal that the appellant is seeking to challenge the Council's position on curtilage listing.
16. The Council stated that it has justified its position through the submitted evidence and has acted reasonably at all stages of the application and appeal.

Reasons

17. 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.
18. No substantiated evidence has been put to me in respect of the level of engagement between the parties during the processing of the application, whether meetings were sought and what may or may not have been discussed. I therefore cannot reach any informed conclusion on this point.
19. The appeal was dealt with by way of a hearing. Although the appellant sought to submit a document that responded to the Council's Statement of Case once this was submitted, the hearing procedure does not make allowance for such submissions. Whilst this may have been offered to the Council, the Council

was not obliged to accept it as it had not been accepted by the Planning Inspectorate due to being outside the procedural rules. At the hearing, the appellant raised this document again but advised when asked that it did not refer to any case law not previously mentioned in their Statement of Case and did not contain any court transcripts.

20. In the hearing itself, the appellant and their representatives did not seek to rely on any case law not previously mentioned. Neither party included transcripts of any of the judgements cited as part of their submissions. However, they are well known cases with which I am familiar.
21. The evidence indicates that in arriving at its position on whether the Old Manor Stables was a curtilage listed building the Council took into account the factors identified in *Her Majesty's Attorney General at the relation of Robin Sutcliffe, John Rouse, and Tony Hughes v Calderdale Borough Council* [1983] WL 216788. These are still good law and are cited in all of the cases that post-date it.
22. The Council did not refer to either *Egerton v Taunton Deane Borough Council* [2008] EWHC 2752 (Admin) or *R (oao) Hampshire CC v Blackbushe Airport Ltd* [2021] EWCA Civ 398 in its evidence. However, whilst the former may have taken a more nuanced approach to the *Calderdale* factors, the latter noted that the ambit (or physical extent) of the curtilage of a building in any given case will be a question of fact and degree. *Blackbushe Airport* also confirmed that the test for determining curtilage is that established by *Methuen-Campbell v Walters* [1979] 1 QB 525. The factors set out by the judge in *Calderdale* were to determine whether that test was met.
23. In these circumstances, I do not find that the Council acted contrary to, or did not follow, well established case law. It is also clear from the evidence that the Council were aware of, and had regard to, the guidance produced by Historic England regarding Listed Buildings and Curtilage.
24. In respect of the effect on the setting of the listed building, the context within which a listed building is experienced does not depend on either visibility from the public domain or, necessarily, intervisibility between the principal building and other elements of the setting. The Council's evidence in respect of the contribution that the appeal site makes to the understanding of the significance of the principal building is not the most fulsome. Nonetheless, it is sufficient to determine what the Council's concerns were, notwithstanding that, ultimately, I did not share those concerns. I do not find that the Council acted unreasonably in this respect.
25. Where the Council's case is perhaps deficient is in respect of the effect of the development on the wider character and appearance of the area, as distinct and separate from the effect on the setting and curtilage of the listed building. The general character and appearance of the area was not assessed in the case officer's report or in the Council's Statement of Case. Nor was the effect of the proposed shed on the general character and appearance of the area particularly elaborated upon. From what I saw at the site visit, the Council's position is inaccurate in respect of the level of visibility of the shed from the public domain. This element of the reason for refusal is not supported by the evidence and it was thus unreasonable to conclude the development would be harmful in this respect.

26. However, the case does not turn on this point alone and the effect on the curtilage and setting of the listed building would still have been in dispute. It is not the case that the development should clearly have been permitted and the appeal would still have been necessary to resolve this.
27. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the assessment of the effects on the character and appearance of the wider area around the appeal site and a partial award of costs is therefore warranted.

Costs Order

28. 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 Alison Mason, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing and presenting evidence in respect of the effects of the development on the character and appearance of the wider area around the appeal site (but excluding any costs in respect of the matters of setting and curtilage of the listed building); such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is 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.

John Dowsett

INSPECTOR