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## Costs Decisions

Site visit made on 21 May 2024

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 September 2024**

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**Costs application in relation to Appeal A Ref: APP/J3720/W/23/3334286  
Old Post Cottage, High Street, Lower Brailes, Brailes, Warwickshire,  
OX15 5HN**

- 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 Mary Blake for a full award of costs against Stratford-on-Avon District Council.
- The appeal was against the refusal of planning permission for Change of use from former post office and village shop to residential use.

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**Appeal B Ref: APP/J3720/Y/23/3334288**

**Old Post Cottage, High Street, Lower Brailes, Brailes, Warwickshire,  
OX15 5HN**

- 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 Mrs Mary Blake for a full award of costs against Stratford-on-Avon District Council.
  - The appeal was against the refusal of listed building consent for Change of use from former post office and village shop to residential use.
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### Decisions

1. The applications for an award of costs are 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. Both tests need to be satisfied before an award of costs can be made.
3. The PPG gives examples of the types of behaviour that could give rise to an award of costs against a local planning authority. They are not exhaustive but include preventing or delaying development which should clearly be permitted; having regard to its accordance with the development plan, national policy and any other material considerations; and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant cites three ways in which the Council has exhibited unreasonable behaviour that has caused unnecessary costs and wasted expense. These are summarised below. The first is that the Council refused planning permission and listed building consent contrary to the recommendation in the pre-application report, by deciding late in the day that a marketing exercise was necessary after all, despite saying that a letter from a consultant confirming no

realistic prospect of a commercial occupier for the floor space would be sufficient in the circumstances. The second refers to an 8-month delay from when the applications were due to be determined in February 2023 and when the decisions were actually issued in August 2023. The third is the delay in determining the listed building application, despite chasing the case officer and not being made aware that there was insufficient clarification about some of the listed building works that had been undertaken, and were not then given the opportunity to provide more information, which may have resulted in a different decision.

5. The Council's case is that pre-application advice is given informally and is non-binding. The planning officer took the view that, in the circumstances, there could be a looser interpretation of the requirements of the policy and that 'independent confirmation' (preferably from more than one source) that there was no realistic prospect of a commercial occupier, would be sufficient. The Council accepts there were delays in determining the application that should not have occurred, but there was a lack of correspondence, and internal issues such as staff shortages and backlogs. With regards the listed building application, the Council accepts there was an oversight with regards the outstanding information that the Conservation Officer had requested. However, the Council questions whether significant additional work has resulted in appealing the listed building application, when the appellant was already aware the planning application was to be refused and an appeal was likely.
6. The pre-application advice states that a 6-month marketing exercise would be destined to fail and that instead it would be sufficient to provide 'independent confirmation' about commercial prospects. However, this advice was given in conjunction with other things. The Council said the 'independent clarification' should come ideally from more than one source. The appellant provided confirmation from only one source. The Council also suggested that the application should be supported by a survey of local residents which would need to show the residents were satisfied with the alternative retail provision in the village. This also was not submitted.
7. The disclaimer on the pre-application report clearly states that the advice is not a formal decision and does not guarantee a particular decision. Whilst a marketing survey may well have normally been required at validation stage, the Council and appellant were treating the application as a special case and that other information would be considered acceptable instead of the usual marketing survey. However, the Council requested a marketing survey during determination of the application against the backdrop of the absence of the other information it had previously requested. It seems to me the appellant selectively followed the Council's pre-application advice, and the Council was doing its job applying its policies and navigating a development proposal that was not fully policy compliant. The Council's planning officer should have raised the marketing matter with the appellant earlier on in determining the application, but this does not amount to unreasonable behaviour in the pursuit of good planning.
8. The Council acknowledges, on reflection, that professional ethics would have prevented the appellant's agent from marketing the property themselves knowing there was no intention to sell or let the retail floorspace. The Council also acknowledges the case was an "edge case" and in the future will require internal decisions as to how to apply the policy in cases that are not clear-cut.

9. There were significant and avoidable delays in determining the application, which the Council accepts. Staff shortages and a backlog of applications were likely contributing factors. However, this amounts to poor service – not unreasonable behaviour. The appellant could have exercised their right to appeal against non-determination of the applications anytime after the February deadline.
10. There is also the situation in the listed building application whereby the case officer overlooked the outstanding matters identified by the Council's Conservation Officer that still needed confirmation. The appellant had submitted some additional information, but as the case officer explains this was deemed insufficient. Nonetheless, the case officer should have checked the application more thoroughly and sooner and been aware that matters were still outstanding and informed the appellant. The Council does acknowledge this. Nevertheless, the Conservation Officer had legitimate concerns, as I too have, and the Council was correct to act on them, albeit belatedly in the process. Following through its concerns about the impacts of works carried out to a listed building is not unreasonable behaviour, although I accept the Council handled the matter poorly.
11. The fact remains that the listed building application was not supported by satisfactory detail in the first instance. Indeed the appellant acknowledges that if information had been provided during the application process it would have negated the need for the listed building appeal and the additional costs associated with it. The appellant supplied some additional information, but this was deemed inadequate. I too had to request additional clarification from the appellant as to what works listed building consent was being applied for, but this has not been sufficient. Therefore, I am doubtful the appellant would have provided the adequate information, even if the Council had given them further opportunity, when the appellant has not done so as part of the appeal process. The appellant was aware the planning application was likely to be refused and in light of the above an appeal against the listed building application would likely have not have been avoided.
12. To draw the matters together, I find the Council did not act in a manner it should have, that there were unacceptable delays, and the Council did not provide a good service to the appellant. However, the Council's concerns with regard both applications were justified and do not amount to unreasonable behaviour. I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.
13. I am aware the prospect of enforcement action remains, but undertaking any work without the necessary permissions and consent runs this risk.

### **Conclusion**

14. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*K. Stephens*  
INSPECTOR