



Costs Decision

Hearing held on 2 October 2024

Site visit made on 2 October 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Costs application in relation to:

Appeal A Ref: APP/M2270/W/24/3344078

Appeal B Ref: APP/M2270/Y/24/3343251

Appeal C Ref: APP/M2270/Y/24/3343253

5 Calverley Park, Royal Tunbridge Wells, Kent TN1 2SH

- In respect of Appeal A, 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).
- In respect of Appeals B and C, 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 Mr Michael Kingshott for a full award of costs against Tunbridge Wells Borough Council.
- Appeal A was against the refusal of planning permission for replacement of existing garage/shed/conservatory with a two-storey rear and side extension incorporating a double garage, revisions to internal layout of the main dwelling at ground and first floors and alterations to external facades.
- Appeal B was against the refusal of listed building consent for replacement of existing garage/shed/conservatory with a two-storey rear and side extension incorporating a double garage, revisions to internal layout of the main dwelling at ground and first floors and alterations to external facades.
- Appeal C was against the refusal of listed building consent for a two-storey rear extension and associated alterations.

Decision

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

Preliminary Matters

2. Prior to the Hearing, the applicant submitted a document titled 'Calverley Park – Costs Application'¹. This provided a schedule of costs incurred, but included no indication of what the applicant considered to be unreasonable behaviour by the Council that had caused unnecessary or wasted expense in the appeal process. Through the Planning Inspectorate case officer, I brought this omission to the attention of the parties in an email which also clarified that details of actual costs incurred were not required. My Pre Hearing Note subsequently highlighted that I had received no further clarification from the applicant on the intent of the 'costs application' or details of grounds.
3. Very shortly before the Hearing opened, the applicant submitted an updated document 'Calverley Park – Costs Application'². However and despite my

¹ Dated 22 July 2024

² Dated 30 September 2024

previous prompts, this still provided a schedule of costs incurred but no further explanation of what the applicant considered to be unreasonable behaviour that had caused unnecessary or wasted expense in the appeal process.

4. During the Hearing, the applicant confirmed their intention to make an application for costs, and made the application orally. The Council was not in a position to make an immediate response to the application, and I agreed with the parties that the Council's response and any final comments for the applicant would proceed through written submissions following the close of the Hearing.
5. In making the application at the Hearing, the applicant outlined that it related to Appeals A, B and C. However, I note that a written version of the application submitted by the applicant³ refers only to costs in respect of Appeal C. The Council's response to the costs application refers to all three appeals, consistent with the application as it was made during the Hearing, and I have also considered the application as being made on this basis.
6. Because the Council's response to the application for costs was made in writing, it is a matter of record and there is no need to rehearse it here. The applicant did not submit any further comments in reply to the Council's response.

The Oral Submissions for Mr Michael Kingshott

7. In essence, the Committee behaved unreasonably in refusing an application for listed building consent that had already been found to be sound through the approval of the planning application for the same scheme. All of the key matters that had been determined by the Council to be acceptable in the approved planning application, were revisited with unfounded, contrary and inexplicably different conclusions reached. Furthermore, the specific reason for refusal was absent from the previously refused scheme; in effect the Council had invented a new reason for refusal. During the planning committee meeting, the Chair recognised the absurdity of the approach (unreasonable behaviour) that was being taken by committee members, and this is recorded in the minutes and video stream. All of this sits within the parameters of a scheme that was determined by the Council's own officers and expert advisors as being a sound and policy compliant application.
8. The reason for Appeals A and B being made was because of the irrational and unreasonable behaviour in refusing the Appeal C scheme.

Reasons

9. Parties in planning appeals normally meet their own expenses. However, 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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
10. Three appeals have been made in respect of the appeal dwelling which is part of a listed building. Appeals A and B relate to parallel applications seeking

³ Document dated 30 September 2024, but submitted to the Planning Inspectorate on 11 October 2024

planning permission and listed building consent for the same proposal while Appeal C relates to an application seeking listed building consent for a revised proposal.

11. In refusing the Appeal A and Appeal B applications, the Council's reasons for refusal included specific reference to harm to the listed building by reason of the 'position, form and size of the side extension'. While the reason for refusal of the Appeal B application also refers to impact on symmetry, it specifically states that it is the position, form and size of the side extension which would unduly impact on the symmetry of the listed building pair. Read in this context, the reasons for refusal do not suggest to me that the Council had identified a concern in respect of the rear extension element of the Appeals A and B proposals.
12. As a result, I would have sympathy with the applicant feeling surprised and bemused when the Appeal C application, which omitted the side extension specifically identified as being at issue in the Appeals A and B proposal, was also then refused. In addition, the decision to refuse the Appeal C application was made by the Council's Planning Committee after it had previously granted planning permission for the same scheme⁴ earlier in the meeting.
13. Applications for planning permission and listed building consent are subject to different legislative provisions and there may be no procedural reason why different decisions may not be reached on respective applications for the same proposal. Nevertheless, in granting planning permission, I would have expected the Council to take into account effects on the listed building. Indeed, there is a statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
14. Having regard to the basis of the reason for refusal of Appeal C in this case, the apparent failure to identify harm to the listed building in granting planning permission for the same proposal would seem to me to be clearly contradictory. On the face of it, the refusal of the Appeal C application for the rear extension also introduced a new aspect of concern that had not been previously raised in Appeals A and B where the specified concern was the side extension. This suggests to me a further lack of consistency.
15. Nevertheless, the ostensibly new aspect of concern was raised in the determination of the Appeal C application. This is not therefore a case where the Council introduced a new reason for refusal as part of the appeal process leading to a prolonging of proceedings which is one of the examples given in the PPG of behaviour that may give rise to a procedural award of costs against a local planning authority.
16. Furthermore, the Council has in my view submitted adequate evidence as part of the appeal process to properly substantiate and justify its reason for refusal of the Appeal C application. Indeed, I have also found in my appeal decision that the Appeal C proposal would cause unacceptable harm to the listed building. Despite the apparent lack of consistency with the earlier decisions noted above, I therefore consider that there were sound planning reasons for the Appeal C application to have been refused. Even if I were to find that the

⁴ Application ref 23/02420/FUL

contrary decision on the associated planning application and the apparent lack of consistency with earlier decisions on the Appeals A and B scheme amounted to unreasonable behaviour by the Council, I find in this context that the decision on Appeal C was not in itself unreasonable. This is not therefore a case where Appeal C should have been avoidable, and I find that the refusal of the Appeal C application did not lead to the applicant incurring unnecessary or wasted expense in the appeal process.

17. Moreover, the circumstances of the decision on the Appeal C application is not compelling evidence that the Council behaved unreasonably in the determination of the Appeals A and B applications. Neither do I find that the decision on the Appeal C application would negate or fundamentally discredit the reasons for refusal of Appeals A and B which concern a larger overall proposal. That the applicant chose to appeal the Appeals A and B decisions along with Appeal C was their prerogative, and I find that they have not been put to unnecessary or wasted expense in doing so.
18. I appreciate that the officer recommendations to the Planning Committee on all three of the appeal applications were that planning permission (Appeal A) or listed building consent (Appeals B and C) should be granted and that there were no objections from the Conservation Officer. However, the Committee was entitled to exercise planning judgement to reach a different conclusion on the merits of the proposals. In my assessment, the Council has provided adequate evidence to substantiate its objections in each case. Its reasons for refusal were well-founded and I find that it did not behave unreasonably in determining the applications contrary to the officer recommendations.
19. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR