Costs Decision

Site visit made on 13 November 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2025

Costs application in relation to Appeal Ref: APP/Q4625/W/24/3347622
Stables, Norton Green Lane, Solihull B93 8PJ

- 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 John Davy for a full award of costs against Solihull Metropolitan Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for the conversion of former stables to a single dwelling.

Decision

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

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.

3. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal. The applicant's cost claim is made on the basis that the Council did not engage in a meaningful way during the application process, that it contended that the proposal amounted to inappropriate development in the Green Belt despite a previous Inspector's decision, and that it did not provide a robust assessment as to whether the proposal would represent the optimal use of a heritage asset.

4. The National Planning Policy Framework (the Framework) advises that local planning authorities should work proactively with applicants[1]. It would therefore have been good customer service for the Council to clearly communicate all of their concerns regarding the proposal to the applicant, including any issues raised by consultees. Nevertheless, the Council is entitled to determine the proposal put to it and it did engage with the applicant during the application[2].

5. A previous Inspector determined that a similar proposal for the conversion of the existing stables would not amount to inappropriate development in the Green Belt[3]. This formed a material consideration. The Council acknowledges this decision but explains in its officer report that it considered the more intensive use of the land along with a widened access track would reduce the openness of the Green Belt. While the width of the track was reduced with an amended plan and I have not agreed with the Council on this matter, I am nonetheless satisfied that it substantiated its view in this regard.

6. The applicant's planning submission contended that even if the location of the appeal building was deemed to be isolated, it considered that the stables comprised a heritage asset worthy of conversion under what is now paragraph 84(b) of the Framework[4].

[1] Paragraph 38 of the Framework.
[2] As evidenced in email threads 1 – 4 provided with the applicant's statement of case.
[3] Appeal decision APP/Q4625/W/16/3160260.
[4] As set out in paragraph 3.22-3.38 of the applicant's supporting statement dated October 2023.

(previously paragraph 80(b) as referred to by the parties). This was reiterated in the applicant's correspondence to the Council of the 23 January 2023. The Council suggests that this matter was considered in the officer report as part of the very special circumstances (VSC) of the case, but that it deemed that it did not outweigh the harm identified. It also suggests that the officer report clearly sets out that the proposal would not have a harmful impact on the building itself, nor on its setting from a heritage perspective. I find this not to be the case.

7. Under the VSC section of the officer report, the Council refers explicitly to the consultation response from the archaeological advisor reiterating that the works would be likely to alter, damage or obscure elements of the historic building fabric. No explanation is provided as to how this view was formed and it appears to conflict with earlier comments that the external changes to facilitate the change of use would be minimal. In any event, there is no clear assessment within the officer report whether the Council considered the appeal building to be a heritage asset.

8. The applicant's submission went into considerable detail about why the stables could not be used for their original purpose, but this was dismissed via a one-line response in the officer report that did not reference any of the information provided. I find that the Council has failed to demonstrate that it properly considered the information presented to reach an informed decision. Whilst the development plan takes primacy, I find little regard has been expressed in the Council's officer report in respect of the Braintree judgement or paragraph 84(b) of the Framework. On the evidence before me, the Council relied on vague and generalised assertions which are unsupported by any objective analysis of the appeal proposal and the other material considerations.

9. An appeal may not have been avoided in its entirety. However, I find that unreasonable behaviour has occurred from the Council's failure to properly consider whether the proposed development would represent the optimal viable use of a heritage asset. The applicant has incurred costs in having to defend this aspect of the appeal.

Conclusion

10. I find that unreasonable behaviour arising from the failure to consider Government policy resulting in unnecessary expense as described in the PPG, has been demonstrated. A partial award of costs in respect of the first reason for refusal only, is justified in this instance.

Costs Order

11. 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 Solihull Metropolitan Borough Council shall pay to Mr John Davy, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first reason for refusal. Such costs are to be assessed in the Senior Courts Costs Office, if not agreed.

12. The applicant is now invited to submit to Solihull Metropolitan Borough 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.

M Clowes

INSPECTOR