
Costs Decision

Site visit made on 19 November 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2019

**Costs application in relation to Appeal Ref: APP/L3245/W/19/3234449
The Red Castle, A528 from Shrewsbury and Atcham district boundary to
Higher Road, Ellesmere Road, Harmer Hill SY4 3EB**

- 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 David Davies (Ashvale Contracting Ltd) for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for demolition of the existing building and outhouse and the erection of 2 No semi-detached two storey dwellings with off street parking, gardens and services.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that a local planning authority may be at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material consideration, or for refusing permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
4. The appellant states that, had the Council classed the site as a heritage asset 'in a legally-binding way' the application would have succeeded. In that regard, the appellant's submissions refer to criteria and requirements set out in the Localism Act 2011¹, which relate to the designation of land or buildings as Assets of Community Value (ACVs). However, it is evident from the Council's submissions that, in referring to the existing building as a heritage asset, it identified it as a non-designated heritage asset (NDHA) under the terms of the National Planning Policy Framework (the Framework), not as an ACV under the terms of the Localism Act.
5. In referring to the building as a heritage asset and considering the implications in that regard, the Council's submissions refer solely and consistently to development plan policies and the Framework which are relevant to heritage

¹ Including those in sections 87, 88, 89 and 90.

assets, including some specifically relevant to NDHAs. The Council makes no suggestion that the building is, or should be, an ACV. It has clearly set out its reasons for identifying the building to be an NDHA with reference to the Framework and relevant development plan policies and, having done so, has articulated its concerns and substantiated its reasons for refusing permission in that regard. I am therefore satisfied that the Council has considered the application in the correct policy context. Accordingly, and as it will be seen from my decision that I agree with the Council's conclusions in that regard, I conclude that it has not behaved unreasonably in its identification of the building as a NDHA, or in refusing the application on that basis.

6. It is evident from the Council's submissions that, in concluding that the development would cause harm to highway safety, it had regard to the existing parking bays on the site frontage. However, it was not unreasonable for the Council to reconsider the suitability of that arrangement, or the adequacy of the adjacent footway width, in the light of the new residential use and the particular layout proposed. Therefore, whilst I have reached a different conclusion on that particular matter, the Council did not behave unreasonably in reaching the conclusions it did, as a matter of planning judgement and having regard to its development plan policy CS6 which, amongst other things, requires development to be safe and accessible to all.
7. The appellant's bat survey concludes that the existing building is a confirmed bat roost. In the light of that survey, and in the absence of further surveys to characterise the roost(s) and inform any necessary mitigation, it was not unreasonable for the Council to conclude that the proposed demolition of that building could have an adverse effect on bats, or that it could not be certain as to the extent to which that protected species could be affected by the proposal. Its approach in that regard, and in concluding that those further surveys could not be left to coverage under planning conditions, is entirely consistent with its development plan policies and relevant national guidance relating to protected species, and was not unreasonable.
8. The Council's decision was made some time after the expiry of the relevant target determination date and, from the limited evidence before me, it appears that the Council could perhaps have communicated more effectively with the appellant with regard to that delay. However, there is nothing before me to suggest that the Council's decision would have been any different had it been made earlier. For the reasons given, I consider that the Council has adequately substantiated its reasons for refusal, and it will be seen from my decision that I also consider the proposal to be unacceptable overall. Therefore, the Council's actions have not delayed a development which should clearly have been permitted, or led to an appeal which could otherwise have been avoided, and thus do not amount to unreasonable behaviour in the terms of the PPG.
9. The appellant has referred to costs associated with the lapsing of an option agreement on the site. However, such matters are not within the scope of the costs regime as set out in the PPG, which relates only to costs incurred in the appeal process. In any event, for the reasons given, I have found no unreasonable behaviour on the part of the Council in its refusal of the application. It therefore follows that the appellant has not been put to unnecessary or wasted expense in the appeal process.

Conclusion

10. For the reasons given I conclude that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated, and that an award for costs is therefore not justified.

Jillian Rann
INSPECTOR