



Costs Decision

Hearing held on 15 July 2008

Site visit made on 15 July 2008

by **G M Hollington MA, BPhil, MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
13 August 2008

Costs application in relation to Appeal Ref: APP/W0340/A/08/2064920 Lake at Child Beale Trust, Lower Basildon, Reading, RG8 9NH

- 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 The Consuta Trust for a full award of costs against West Berkshire Council.
- The Hearing was in connection with an appeal against the refusal of planning permission for "construction of a new cut between Beale Park Lake and the river Thames, with footbridge; the purpose of the development is to allow occasional boat access to and from the lake" without complying with conditions attached to planning permission Ref. 00/01195/FUL, dated 6 November 2001.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the Appellant

1. The Council did not consider the planning application in a reasonable manner. Having asked for advice in July 2006, the local planning authority (LPA) gave no indication of any serious planning problems; information that it was contrary to policy principles was given only after refusal. Not knowing about the officer's change of mind to rejection deprived the applicant of the opportunity of asking for the application to be referred to the planning committee.
2. Confusing and contradictory advice was given on how to apply. The advised fee and type of application varied several times, causing a 2-month delay in processing the application and a lot of extra work. There was an impression of internal discord within the planning department and it seems the senior officer was seeking a form of application for which rejection would be easier to justify.
3. A very late change in the wording of the application (to include "permanent") was requested by the LPA and naively agreed but it seems this was also motivated by strengthening the reasons for rejection.
4. Details of usage of the cut given in the design and access statement were disregarded and, despite requesting to do so, the LPA refused to meet to correct some facts for the appeal. It also incorrectly recorded the Basildon Parish Council's view that they approved the application and did not consult any authority about *Consuta* being part of the heritage of the local area and a listed National Historic Ship.
5. The application should have been put to the committee rather than being a delegated decision because of the contradictory officer advice and the intended public benefit – the erroneous points in the officer's recommendations could only be addressed by making the appeal.

6. Two examples of case law that mooring of boats is not a planning issue were requested by the LPA but ignored, and requests after rejection for further information about Policy RL5A were ignored. The application has been supported by various third parties but the LPA has made no effort to respond to their views. The LPA notification letter to parties about the appeal was wrong as it did not refer to condition 7.
7. The application is based on Circular 8/93: *Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings*, Annex 3, paragraphs 28; 27 and potentially 11 (refusal to meet); 15 (Parish Council support); and 9 (National Historic Ships). Although working on a volunteer basis, expense was incurred or wasted unnecessarily through preparation of appeal documents, travelling and telephone calls. Stress was also caused.

The Response by the Local Planning Authority

8. The LPA has not behaved unreasonably. Its pre-application advice was stated as being "without prejudice" and it was based on the nature of the application put forward at that time. The nature of the proposal later changed and the LPA responded with advice by reference to the different possibilities (in terms of application types) that were put forward by the appellant.
9. The application did not go to the Eastern Area Planning Committee as the local member did not call for this and no letters of support were received (10 would have triggered consideration by committee). The design and access statement was fully taken into account when considering the merits of the application.
10. Advice was provided on the basis of information presented by the appellant; though not requested by the LPA, it was fully taken into account when considering its pre-application advice. Having been advised there were 2 different possible types of application, the appellant chose to make the application to vary conditions of an existing permission.
11. The LPA advised the appellant that the appeal process was the most appropriate way to test its decision, given the lack of agreement about the weight that should be given to the historic merits of the application.
12. The procedure has therefore followed the normal process in terms of costs and requests that an award against the LPA be not allowed.

Inspector's Reasons

13. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
14. An award of costs must relate to costs necessarily and reasonably incurred in the appeal process, not costs incurred at the application stage. What is relevant is whether unreasonable behaviour at that stage (or subsequently) caused the claimant unnecessary expense at the appeal stage. Most of the appellant's submissions relate to matters before the LPA made its decision and, while extra work may then have resulted, they did not cause costs to be

- incurred at the appeal stage. The LPA followed its normal application procedures.
15. I shall consider in turn each of the Annex 3 paragraphs on which the appellant relies. Paragraph 28 states the LPA should seek further details about an application if it is unclear about the applicant's intentions, but the LPA did not act unreasonably as it did not refuse permission on the ground that insufficient detail had been supplied.
 16. Paragraph 27 of the Annex refers to the LPA refusing the applicant's request to discuss the application or refusing to supply reasonably requested information. The applicant requested a meeting by letter dated 18 December 2007, but this was after the LPA decision had been made. Further information on Local Plan Policy RL5A was provided by the Council in its letter of 7 January 2008, saying that the proposal was not assessed against this policy.
 17. Annex 3, paragraph 11 expects the LPA to show it has considered the possibility of imposing relevant conditions or any proposed to them. I have no evidence the applicant proposed any conditions and it seems unlikely the LPA's concerns could have been overcome by conditions as its objection is to the principle of long-term mooring at the site.
 18. Paragraph 15 of the Annex expects the LPA to consider the views of local residents. The marks in the boxes of the Parish Council response form seem slightly ambiguous but overall it seems clear its stance was one of no objection subject to any relaxation applying only to *Consuta* and its floating boathouse; this was correctly reflected in the officer's delegated report.
 19. Annex 3, paragraph 9 refers to the need to consider relevant professional or technical advice and to show there are reasonable planning grounds for taking a decision contrary to such advice. National Historic Ships is not a statutory consultee but I note the River Thames Society was consulted (but made no comment).
 20. The mistake in the notification letter was not material to consideration of the appeal and none of the other submissions by the appellant relates to matters contained in Circular 8/93. Overall, I consider that the Council did not prevent development which could reasonably be permitted and it did not behave unreasonably.

Conclusions

21. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

22. I refuse the application for an award of costs.

G M Hollington

INSPECTOR