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## Costs Decision

Hearing Held on 2 November 2021

Site visit made on 1 and 2 November 2021

**by S Ashworth BA (Hons) BPI MRTPI**

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

**Decision date: 30 NOVEMBER 2021**

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### **Costs application in relation to Appeal Refs: APP/T2350/W/20/3260383 and APP/T2350/Y/20/3260384**

#### **Oxendale Hall, Osbaldeston Lane, Osbaldeston BB2 7LZ**

- 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 Belmore Holdings for a full award of costs against Ribble Valley Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the demolition and reconfiguration of existing 20<sup>th</sup> century extensions, new extensions and new garaging with associated landscaping.
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### **Decision**

1. The application for costs is refused.

#### **The submissions for Belmore Holdings**

2. The Planning Practice Guidance includes a non-exhaustive list of points which could give rise to an award of costs against a local authority. In that regard the appellant considers that the Local Planning Authority (LPA) has acted unreasonably in three respects: made vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; acted contrary to and did not follow established case law; misrepresented/misunderstood and failed to have proper regard to the views of a statutory consultee and failing to produce a professional assessment of a development proposal.
3. Specifically, the LPA determined the applications based on a misrepresentation/misunderstanding of the views of Historic England (HE), thereby making inaccurate assertions about the proposal's impact. Had the views of HE been objectively analysed the comments about the scheme would not have been made.
4. In addition, the LPA failed to give great weight to the views of HE contrary to case law and had failed to acknowledge in its determination the response of the Lancashire Gardens Trust.
5. The delegated report fails on a number of grounds including finding a conflict with development plan policies without indicating why a conflict is considered to occur; failing to reference the correct version of the National Planning Policy Framework and provides no clear view as to why the officer has taken a

different view to the report of a heritage professional and the views of the statutory consultees. On that basis a proper assessment would have led to a different outcome on the appealed applications without the costs associated with an appeal.

### **The response by Ribble Valley Borough Council**

6. The LPA set out that it carried out its statutory duty set out in accordance with s16 and s66 of The Act<sup>1</sup>. The report identifies relevant elements of the buildings and the setting, and the harm to this from the development proposals. Furthermore, the LPA made an initial assessment of the proposals which was restated in the report.
7. The decisions have regard to material considerations which are set out in the report under the heading 'Impact on the special architectural or historic interest of the listed building and the setting of listed buildings. The reasons for refusal relate to development plan policies, mindful that it is not necessary to have regard to the development plan in considering a listed building application. The report and decision notice identify the core strategy policies.
8. The LPA state that the opinions of the statutory and non-statutory consultees were considered in assessing the material considerations and in making its decision. HE comments and conclusions are summarised in the officer's report. Mindful of differences between the opinion of HE and the appellant's conservation consultant the case officer considered areas of disagreement and made his opinions explicit.
9. The comments of the Lancashire Gardens Trust arrived after the consultation period but were taken into consideration. However, Oxendale Hall is not on or within the setting of a park or garden on the register and the Gardens Trust is not a statutory consultee. The Gardens Trust is not a historic amenity society which the LPA is required to consult on applications involving the partial or total demolition of a listed building.
10. The LPA considered an earlier Heritage Statement<sup>2</sup> commissioned by the appellant which had informed the statement accompanying the applications. The study was quoted in the report to provide an understanding of the significance which had informed his opinion on the existence of harm and recommendations. The case officer considered the Heritage Impact Assessment and was conscious that different methodologies may result in different conclusions.
11. Notwithstanding references to the date of the NPPF the case officer made recommendations in regard to the latest version because of automatic update to the weblink.

### **Reasons**

12. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

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<sup>1</sup> The Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>2</sup> 'The Oxendale Hall, Osbaldeston, Lancashire Heritage Statement' (Architectural History Practice 2017)

13. Prior to the refusal on 2 April 2020 of the applications for planning permission and listed building consent, the proposals had been the subject of considerable discussion over a period of time, including discussion between the appellant and HE. I note that HE wrote to the appellants on a number of occasions, setting out their concerns, their assessment of the various iterations of the scheme and their conclusions. Their consultation response of 19 March 2020 sets out in its summary that the works, although considerable, relate to areas of lower significance and, it was considered, would not result in harm to the significance of the building. On that basis HE recommended that they did not have any objection to the applications on heritage grounds.
14. The Officer's delegated report summarises the HE response, noting their views that the overall impact would not be harmful, that there were no concerns with the proposed garaging and that the impact of the proposed alteration to the landscape strategy would have a negligible impact. On the basis that HE's conclusions are set out at the start of the report, and further analysed within the body of the report, I am satisfied that the HE comments were taken into consideration by the LPA.
15. I acknowledge the appellant's concern with the statement within the report, that HE advice 'appears to reflect the case officer concerns as set out in their early assessment of the case dated 19 March 2020'. However, whilst confusing, this statement seems to me to relate to the 'potential impacts of the scheme' highlighted by HE. Notwithstanding this, the report analyses each of the matters raised by HE and sets out, albeit in an unconventional way, the officers views on them. Although the report does not specifically identify the weight to be given to the HE comments as a material consideration, given the degree of analysis, it seems that the comments were given great weight. Moreover, for this reason, I am unconvinced that the Council misunderstood or misrepresented the view of HE.
16. The comments of the Lancashire Gardens Trust were not mentioned in the officer report. Whilst I acknowledge that the organisation may not be a statutory consultee for the works proposed, it seems to me that this is an omission from the report. However, I am unconvinced that the omission was an attempt to conceal information, particularly as it is available to view on the website, but rather it seems to me to have been an oversight. I have no reason to believe that the case officer had not had sight of it at all. Similarly, whilst there is only a limited reference to the Heritage Statement within the report and no specific analysis of it, I am unconvinced, given the officer's own assessment, that it was not taken into account.
17. The relevant development plan policies are listed within the report and the proposal is determined against them as required by s38 (6)<sup>3</sup>. The policies are also listed on the planning permission decision notice but are not determinative in the listed building application. Whilst not set out fully in the report I am satisfied from the detail of the report that the proposals were appropriately assessed against the relevant policy requirements.
18. I note reference to a previous version, the 2018 version, of the National Planning Policy Framework within the conclusion. However, again this appears to be an error rather than an attempt to mislead. In any event the approach of the 2018 and 2019 versions, and the latest version of the Framework 2021, in

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<sup>3</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004.

terms of weighing harm, where it would be less than substantial, against public benefits has remained unchanged.

19. It seems to me therefore that there are some obvious omissions in the officer's report. However, I am unconvinced that the proposals had not been thoroughly assessed against development plan policies having regard to material considerations including the responses from consultees, including HE. Moreover, even had the report been written in a different way, I am unconvinced that the Council would have reached a different conclusion. Indeed, the same conclusion was reached in a subsequent application for an amended proposal. Rather it seems to me that there was a fundamental disagreement between the parties that could have only been resolved by way of an appeal.
20. Accordingly, unreasonable behaviour that has resulted in unnecessary or wasted expense has not been demonstrated. For that reason, the application for costs is refused.

*S Ashworth*

INSPECTOR