
Costs Decision

Site visit made on 10 October 2016

by **Robert Parker BSc (Hons) Dip TP MRTPI**

Decision date: 16 November 2016

Costs application in relation to Appeal Ref: APP/Q1255/W/16/3150017 48 Upper Road, Poole BH12 3EW

- 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 A Andrews for a full award of costs against Poole Council.
 - The appeal was against the refusal of outline planning permission for sever land to front of plot and erect a pair of semi-detached bungalows.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 unnecessary or wasted expense in the appeal process.
 3. The application for costs is based in part on the assertion that the local planning authority acted unreasonably by singling out the appeal site as being of insufficient size when there are numerous examples of smaller sites in the immediate area. However, none of the cases drawn to my attention are directly comparable to the appeal scheme. In my decision I find that the proposal would be at odds with the prevailing pattern of development in this particular section of Upper Road which is more spacious than on surrounding streets. In light of this, I am satisfied that the decision to refuse permission was based on a proper analysis of the site context. It follows that the appellant's evidence on this matter was a necessary part of the appeal process.
 4. The tree was highlighted by the case officer in pre-application correspondence as being preferable for retention. It was subsequently made the subject of a Tree Preservation Order which elevated its importance. The scheme was assessed accordingly and significant weight placed on the need to safeguard the amenity value of the tree. Whilst matters relating to overshadowing were not brought out in pre-application correspondence, their introduction should not have come as a significant surprise to the appellant given the newly protected status of the tree.
 5. The local planning authority has not provided any compelling evidence to support the contention that the root systems of the tree would be adversely affected. Although I am told that there was input from the Senior Arboricultural Officer,
-

his/her advice was not placed in writing and is not before me. Given that the appellant has submitted an arboricultural impact assessment it would have been prudent for the Council to offer technical evidence from a suitably qualified expert. The failure to properly substantiate the third reason for refusal constitutes unreasonable behaviour. This has incurred the appellant in the unnecessary expense of preparing evidence in respect of this particular issue, notwithstanding that the appeal could not have been avoided in its entirety.

6. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

7. 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 Poole Council shall pay to Mr A Andrews, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the third reason for refusal which deals with the effect of the proposed development on the roots of the protected oak tree.
8. The applicant is now invited to submit to Poole 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Parker

INSPECTOR