
Costs Decision

Site visit made on 30 November 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 16th January 2017

**Costs application in relation to Appeal Ref: APP/N2739/W/16/3158300
Land to rear of Yew Tree House, Chapel Green, Appleton Roebuck, York,
North Yorkshire YO23 7DP**

- 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 Mrs Eileen Carter for a full award of costs against Selby District Council.
 - The appeal was against the refusal of planning permission for the erection of new build 3 bedroomed detached dormer bungalow with new turning head. Demolition of existing brick garage and stone garden wall.
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Decision

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

Reasons

2. 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. The Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or if vague, generalised or inaccurate assertions about a proposal's impact are made which are unsupported by any objective analysis.
 4. The appellant's main concerns relate to the fact that Council members chose not to follow officer recommendations and, as a result, have not provided a substantive case to justify their conclusions.
 5. One of the reasons for refusal suggested that the proximity of the development to the oak tree would have a detrimental effect on the tree's roots and could cause damage to the dwelling. Members also had no substantive evidence before them to suggest that the foundation system proposed would have any materially harmful effect on the root protection area of the tree. This aspect of the case was also not expanded on in the Council's appeal statement. However, the arboricultural reports provided by both the applicant and Council did not raise any specific concerns about the threat to the tree in relation to appropriate pruning or any risk of felling as a result of the development.
 6. The risk of increased pruning to the tree associated with its effect on outlook and light, does include an element of judgement. However, there was no
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suggestion of any realistic threat to the health of the tree as a result of its proximity to the development , nor was there anything to suggest the tree would be realistically capable of damaging the house. The recommendation from the Council's arboricultural report that it may be worth considering a Tree Preservation Order (TPO) to provide future control is not evidence of a viable risk. The case made within the appeal statement, provides no new evidence or anything that suggests that the risk of damage to the new dwelling, or risk to the health of the tree from the proximity of the development, would be likely. In this regard, Council have relied on vague generalisations and thus acted unreasonably.

7. The question then becomes one of whether this unreasonable behaviour has led to unnecessary expense. The application was likely to have been refused by the Council for the other reasons mentioned and thus would have gone to appeal in any event. However, I accept that providing rebuttal evidence in relation to the effect on the oak tree from the foundations system and pruning was unnecessary and would have led to wasted expense.
8. The reasons for refusal relating to the effect on living conditions and whether the development would be over intensive are largely matters of planning judgement. Members are entitled to not accept the professional advice of officers provided that a planning case can be made for the contrary view. Members were presented with a large amount of information from the Council's officers, the applicant and interested parties and were able to come to their own view as to whether the development would be acceptable in relation to these factors. The Council's reasons for refusal in relation to these issues were clearly set out and cross-referred to the relevant policies and what harm was anticipated. The evidence addressed each point in turn, provided an analysis of the Council's views and concerns and pointed to policies, guidance and other information that they considered supported their case. While I have not agreed with the Council on these issues, I see no evidence of unreasonable behaviour or wasted expense as a result.
9. In terms of the drainage solution, I have accepted the Council's concerns relating to whether the evidence provides sufficient comfort that a solution is possible. I recognise that refusing permission for something that can be addressed by condition is usually evidence of unreasonable behaviour. Nevertheless, the evidence here raises sufficient concern for it to be appropriate to question whether the imposition of a planning condition would be reasonable or effective in this case. Again, the fact that the Members disagreed with officers in this regard is not unreasonable. Sufficient evidence and justification for the Council's position was also provided with the appeal to substantiate their argument and enable me to properly consider the issue.
10. I have also noted that Council members did have regard to their officers' views on whether to proceed with highways related reasons for refusal. In this, they clearly considered and understood the case being put to them and decided not to pursue those reasons. This demonstrates that, in general, a rational approach to decision making was adopted. There is nothing to suggest that the procedural elements highlighted by the applicant, including the drafting of an update report and possible reasons for refusal, are in any way unreasonable in terms of the PPG.

11. The inclusion of policies in the reasons for refusal that the applicant thinks are irrelevant also does not undermine the Council's position. It is within my scope to decide what weight to attach to the various policies and evidence that has been put forward. Even where I have agreed with the applicant, there is still sufficient local and national policy backing to address the issue adequately. As such, I do not consider this to be evidence of unreasonable behaviour leading to unnecessary or wasted expense.

Conclusion

12. The Council put forward four reasons for refusing the planning permission, as set out in its decision notice. I have found that the Council behaved unreasonably in relation to the second of these, insofar as they failed to substantiate the reason and relied on vague and generalised assertions.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Selby District Council shall pay to Mrs Eileen Carter, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the second reason for refusal as stated on the Council's decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the 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.

S J Lee

INSPECTOR