
Costs Decision

Site visit made on 23 January 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 21 February 2017

Costs application in relation to Appeal Ref: APP/K1935/W/16/3159329 131 Chancellors Road, Stevenage SG1 4TZ.

- 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 Stevenage Borough Council for a full award of costs against Mr G Yahiya.
 - The appeal was against the refusal of planning permission for the erection of a single detached house.
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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 parties will normally be expected to meet their own costs in relation to appeals and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The PPG¹ gives examples of unreasonable behaviour that may give rise to a substantive award of costs against an appellant. Amongst other things, this can include where the '*appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period*'.
4. The Council is clearly of the view that the Appellant behaved unreasonably by persisting in efforts to secure planning permission on the site despite two previously dismissed appeals. The Council's application clearly sets out the salient points from these decisions. In its view this has directly caused unnecessary or wasted expense in the appeal process.
5. It is clear from the evidence before me that the appellant was aware of the planning history of the site. Although the most recent appeal decision was made in May 2014², just less than 2 years before the submission of the appeal application to the Council, both the local and national planning policy considerations remain largely the same. I am therefore satisfied that the 2014 appeal can be considered *recent* in the context of the PPG advice.

¹ Paragraph: 053 Reference ID: 16-053-20140306

² APP/K1935/A/14/2211627

6. Although the siting of the dwelling has been amended, the overall proximity and effect on the conservation area is essentially the same as before. I am therefore satisfied that the current scheme is '*very similar*' and on '*substantially the same site*'. As I have already commented there has been little change in policy circumstances beyond the incremental progress of the emerging Local Plan. However, the appellant does not rely on this progress in support of the scheme.
7. The Council acknowledge that a tree survey, identifying those trees to be retained and removed accompanied the current scheme. However, whilst I accept that the report demonstrates that it might well be physically possible to develop the site in a way that safeguards most of the trees on the site, it does not address the fundamental issue of their effect (or any replacement planting) on the living conditions of future residents. These concerns are clearly articulated in paragraph 9 of the 2014 appeal decision as well as the Council's Officer Report.
8. Whilst the appellant sought to address concerns about living conditions in paragraph 6.17 of his Grounds of Appeal, this simply repeats the same arguments that were put before the previous Inspector which were addressed in paragraph 9 of the 2014 decision.
9. However, even if I had taken a contrary view to my colleagues on the issue of trees this would not have led to the appeal being allowed since the potential loss of trees formed only part of the Council's wider argument that the development would fail to respect the general character and settlement pattern of the surrounding area. These arguments have been consistently supported on appeal and the appellant has failed to offer anything tangible as part of the current scheme to address these concerns.
10. I have noted the appellant's view that the Council could have declined to determine the application in accordance with advice in the PPG. However, the Council's response to that particular point indicates to me that its decision was perfectly reasonable given the timescales it was faced with.
11. Overall therefore, I find that this appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
12. Whilst I have some sympathy for the appellant and accept that he acted in good faith, he has failed to properly consider whether he had a reasonable prospect of succeeding. In this respect, I find the unreasonable behaviour threshold has been passed. Accordingly, the Council's costs in mounting the appeal were unnecessarily incurred and an award of costs is, in this case, justified.

Costs Order

13. 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 Mr G Yahiya shall pay Stevenage Borough Council the costs of the appeal proceedings described in the heading of this decision.

14. Stevenage Borough Council is now invited to submit to Mr G Yahiya, 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.

D. M. Young

Inspector