
Costs Decision

Site visit made on 23 February 2017

by Mark Dakeyne BA (Hons) MRTPI

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

Decision date: 23rd March 2017

Costs application in relation to Appeal Ref: APP/P2365/D/16/3165277 Brooklands, 30 Parliament Street, Up Holland, Skelmersdale WN8 0LN

- 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 Harvey Tonge for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for the 'retention of retaining wall and construction of boundary wall above ground floor level'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance 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. Evidence was provided with the appeal documentation that there were retaining structures within the embankment separating the house from the lower garden. However, the evidence that there was a tall wall running along the top of the embankment was less conclusive. It was clear to me that the retaining wall and fence comprising the current proposal were significantly different from what was there before. Therefore, although the Council may not have had detailed evidence of how the embankment was constructed when it made its decision, its approach in relation to the weight that was to be given to the previous characteristics of the site was reasonable.
4. The retaining wall was built before any pre-application discussions and the submission for planning permission. This limited the opportunity for the Council to negotiate an alternative solution. The appellant supported his application with a heritage assessment in accordance with relevant guidance and the officer report indicates that this was taken into account. The Council was entitled to take the position that it did.
5. The Council took into account that the driveway area needed to be suitably retained¹. But it was faced by a solution that it considered insensitive. For the reasons given in the appeal decision I agreed with the Council. Its position was reasonable and substantiated at appeal. Following the refusal of planning permission it would have been open for the appellant to approach the Council to discuss alternatives and submit a revised application but he chose to appeal.

¹ See paragraphs 6.4 and 6.11 of the Officer Report

6. The garden area to the south of the retaining wall always appeared to be at a lower level and, therefore, in that sense was split from the house and grounds at a higher level. The sub-division of the garden did not in itself necessarily require planning permission. However, for reasons given in the appeal decision, the Council's position that the physical works of the retaining wall and fence that accentuated that split were unacceptable was substantiated.
7. The creation of a larger parking and turning area to the front of the house did not require the particular form of retaining structure and fencing. The Council was faced with development that had largely been carried out which limited the scope for assessing whether alternative solutions would have realised the same highway benefits.
8. I have taken into account the other costs decision put before me² but it does not appear to be directly comparable as it involved the Council fundamentally changing its position on Green Belt policy and introducing new objections at appeal stage.
9. For the above reasons the decision to refuse planning permission was not unreasonable and was substantiated at appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Mark Dakeyne

INSPECTOR

² Costs decision ref: APP/P2365/W/16/3161611 dated 3 March 2017