
Costs Decision

Site visit made on 20 February 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 7 April 2017

Costs application in relation to Appeal Ref: APP/N2535/D/17/3166706 Orchard House, 9 Waterford Lane, Cherry Willingham, Lincoln LN3 4AL

- 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 Robin Proctor for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of planning permission for the removal of existing hedgerow to No's 9 and 11 Waterford Lane, Cherry Willingham, Lincoln LN3 4AL and replace with brick built wall with railings. The hedgerow consists of mixed species contaminated with ivy with 5 walkthrough sized and other gaps and is of poor appearance. Removal of existing wall to the area to the west of No 11 and replace with a new wall matching the wall replacing the hedgerow.
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Decision

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

Reasons

2. 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 the party applying for costs to incur unnecessary expense in the appeal process.
 3. The PPG goes on to state that awards of costs against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The appellant's application for an award of costs relies in this instance on both grounds.
 4. The appellant's description of the proposed works set out on the application form refers, in addition to the removal of the existing hedgerow to 9 and 11 Waterford Lane, to the removal of the existing wall to the area west of No 11 and its replacement with a wall to match that proposed to replace the hedgerow at No 9. Although the Council's officer report refers to the length of replacement wall to the west of No 11, the subsequent decision notice clearly states that the proposal is only for the removal of the existing hedgerow and replace with brick built wall with railings.
 5. It will be seen from my decision that I do not agree with the Council in respect of the effect of the proposal on the character and appearance of the surrounding area. However, it seems to me that the Council's assessment of the proposal in respect of RES11 (ii) focuses on, and describes, the existing hedgerow at No 9 in the context of other hedges along Waterford Lane.
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Moreover, it is clear that the extent of the application, as defined by the red-edged site boundary, did not include the area occupied by the existing wall to the west of No 11. I am therefore satisfied that the reference in the officer report to the replacement of the wall at No 11, whether intentional or not, did not play a significant part in the Council's assessment of the effect of the proposal on the surrounding area and the Council has not acted unreasonably in this regard.

6. With reference to substantive matters, the appeal was not accompanied by any substantive evidence relating to the health of the tree in question, the presence of roots within either the application site (within the RPA) or within the alignment of the proposed wall. Had such information been submitted with the application, it may well have been possible to satisfactorily explore this matter at the application stage. However, on the evidence before me that was not the case and in the absence of such, I am satisfied that the Council were entitled to reach the conclusion that they did.
7. I therefore conclude that, for the reasons set out above, unreasonable behaviour, as described in Planning Practice Guidance, has not been demonstrated. As such, there can be no question that the appellant was put to unnecessary or wasted expense. For this reason, and having regard to all other matters raised, an award of costs is not justified.

Graeme Robbie

INSPECTOR