
Costs Decision

Site visit made on 3 April 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 19 May 2017

Costs application in relation to Appeal Ref: APP/Q3060/W/16/3161158 3 Pelham Road, Nottingham NG5 1AP

- 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 Earl and Pelham for a full award of costs against City of Nottingham Council.
 - The appeal was against the refusal of planning permission for the creation of two new parking areas. Replacement of windows and doors.
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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 National 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 the costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a Council is at risk of an award of costs if it behaves unreasonably in relation to procedural matters at the appeal. Furthermore the Council is at further risk of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by an objective analysis.
 4. In relation to procedural matters the PPG includes not agreeing a statement of common ground (SOCG) in a timely manner and introducing a new reason for refusal as examples of unreasonable behaviour. However, a SOCG is not a requirement of the procedures relating to an appeal determined by the written representation procedures. Therefore I do not consider that the Council has acted unreasonably in this respect.
 5. The Council's application report clearly refers to the removal of shrub planting and small trees and that such alterations are not considered to preserve or enhance the character or appearance of the Conservation Area. I do not consider therefore that this is a new reason for refusal, but part of the Council's case in support of reason 1 of its decision notice.
 6. The Council's second reason for refusal relates to the impact of the proposal on the health of two street trees. In this respect they rely on the comments of
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the Council's Tree Officer. While I acknowledge the experience and standing of the Council's Officer the comments are limited, stating that the proposal would have an effect with no further analysis or evidence of the likely impact.

7. I have carefully considered the Council's comments that they were not aware that the appellant's Arboricultural Impact Assessment 2016 (AIA) was part of the appeal documentation and therefore have not provided comment on it. However, the PPG makes it clear that failing to produce evidence to substantiate each reason for refusal is unreasonable behaviour. Therefore irrespective of the presence of the AIA the Council has a duty to provide evidence to support its reasons for refusal. In this regard therefore I find that the Council did act unreasonably.
8. As set out in the appeal decision, I have found that the harm alleged to the street trees by the Council has not been substantiated. Therefore while the appeal was necessary due to the other reasons for refusal, the appellant has been put to wasted expenditure because of their need to consider and respond to the second reason for refusal.
9. I therefore conclude that unreasonable behaviour resulting in wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 City of Nottingham Council shall pay to Earl and Pelham, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the Council's reason for refusal dealing with the impact on the health of the street trees.
11. The applicant is now invited to submit to City of Nottingham 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.

Zoe Raygen

INSPECTOR