
Costs Decision

Site visit made on 31 May 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 19th June 2017

Costs application in relation to Appeal Ref: APP/M0655/W/17/3170948 5 Cinnamon Lane, Poulton-With-Fearnhead, Warrington WA2 0AE

- 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 Warrington Borough Council for a partial award of costs against Mr P Dawson.
 - The appeal was against the refusal of planning permission for demolition of existing boundary wall and construction of new boundary wall.
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Decision

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

Reasons

2. The National Planning Policy Guidance (NPPG) 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 or wasted expense in the appeal process.
 3. The Council considered that the appellant has acted unreasonably by submitting an appeal in relation to an application in which one of the reasons for refusal related to the absence of a tree survey. It is suggested that the failure to provide such a survey resulted in unnecessary time and expenditure in response to the appeal. As such a substantive award of costs is sought.
 4. The NPPG advises at paragraph 053 that an appellant is at risk of a substantive award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. Whilst not referred to by the Council, I also note that costs may be awarded in relation to procedural matters, including only supplying relevant information at appeal when it was requested, but not provided at application stage. The NPPG also states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
 5. In this case a tree survey was necessary in order to determine the effect of the proposal on trees protected by Tree Preservation Orders. The Council has provided evidence that such a survey was requested in writing, via the appellant's agent, on two occasions. The appellant has also provided evidence that their agent queried the need for such a survey on the basis that the proposed wall would be in the same position as the existing wall, though a response to this point does not appear to have been made. It seems that there was some miscommunication from this point with the appellant believing that
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such a survey was not required, though it is clear that the Council confirmed this requirement a few days prior to the determination of the application.

6. Whilst I accept that the absence of the tree survey at application stage was frustrating to the Council, it does not appear that the appellant deliberately sought to evade the requirement for a tree survey. Whilst the Council's appeal statement expands slightly on its officer report in relation to trees, given that this application was also refused on character and appearance grounds, it does not appear that the Council was put to any significant additional work in preparing the appeal statement. As such my view is that the need for additional or wasted expense has not been demonstrated in this regard.
7. The Council also refers to their advice to the appellant regarding a pre-application enquiry to address design and tree concerns, and the fact that as this did not take place a resubmission was received at the time of the appeal. However it does not appear to be suggested that such procedural matters form part of the current costs application.
8. Overall I do not find that the appellant has acted unreasonably in this case. As such the Council was not put to unnecessary or wasted expense.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated.

AJ Mageean

INSPECTOR