
Costs Decision

Site visit made on 7 August 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 22nd August 2017

Costs application in relation to Appeal Ref: APP/V0510/W/17/3170400 Ashfield House, 20 High Street, Stetchworth, CB8 9TJ

- 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 & Mrs P Mahoney for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for outline application (with all matters reserved except access) for the erection of 3 No dwellings with associated access, parking and gardens.
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Decision

1. The application is refused.

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 fails to produce evidence to substantiate each reason for refusal on appeal and/or refuses to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
4. The Council refused the application for three reasons. The first reason related to the adverse impacts of the proposal due to the location of the proposal. Furthermore the application was not supported by a contextual analysis of the site; its immediate environs and the wider locality as required by the East Cambridgeshire Design Guide SPD (2012). As a result the Council could not make an assessment of the benefits of the proposal.
5. I note that this issue was not relayed to the appellant's agent by the Case Officer in an email dated 3 November 2016. The Council state that it was not included as it considered that the applicant would not have been able to overcome this principle reason for refusal due to the location of the scheme, and therefore amendments would not have been possible. Nevertheless a subsequent email from the case officer to the appellant's agent confirmed that "The constraints germane to the determination of this application are evident

as indicated in my previous email to you and I don't feel that any further meetings to discuss these issues would be useful at his stage." To my mind this could reasonably be interpreted as that the earlier email included all aspects of concern. As a result the appellant was unable to address this issue prior to the application being determined.

6. Nevertheless, it is for the Council to determine the application in accordance with the development plan unless material considerations indicate otherwise. The fact that the Council's concerns in respect of the location of the proposal were not raised at an early stage is unfortunate but the application report considers the matter in some detail and there is no evidence to suggest that the matter was introduced without thorough consideration.
7. I note that the information contained in the appellants Planning Design and Access Statement 2016 in respect of this reason for refusal was similar to that contained in the appeal documentation in respect of this issue albeit additional detail was contained within the appeal statement. I have not been persuaded therefore that even if the appellant had had the opportunity to address the issue at appeal stage it is probable that the reasons for refusal could have been narrowed.
8. The applicant refers to the cost of having to pursue an application for pre-application advice following the application being refused to find out how the reason for refusal could be overcome in any resubmission as the planning officer declined to talk to the applicant. I have seen limited evidence of this and in any case an application for pre-application guidance is an accepted way of proceeding to seek advice prior to submitting an application. Such applications may or may not attract a fee.
9. The third reason for refusal related to the impact of the proposal on protected trees, particularly trees 0602 and 0603 which the Council consider to be covered by a Tree Preservation Order. I note that the Council's tree officer had objected to an original scheme which would have required the removal of a number of trees. This resulted in concerns being raised by the Case Officer with the appellant. As a result, an amended scheme, reducing the number of trees to be removed, and a further arboricultural report were submitted by the appellant to address the issues raised. In addition evidence was submitted questioning whether 0603 was covered by the TPO.
10. I have seen no response from the council's tree officer in response to these amendments and the Council state that an objection was maintained to the development. It is unfortunate that the decision was made prior to the expiration of the consultation period, but I have been provided with no evidence to suggest that the council's tree officer either supported or maintained an objection to the amended proposals.
11. Although the Council subsequently granted an application to fell tree 0602 (17/00602/TPO) they required a replacement tree to be planted which would also be the subject of the TPO. This would not necessarily have been the case if the tree was approved for removal via the planning application. In addition, the Arboricultural Report version 2 November 2017 simply states that tree 0602 is in poor condition and was placed in category C. The report states that category C trees could be retained and are considered to be of low quality. They have a life expectancy of at least 10 years. Based on the information

available to the Council at that time, I find it reasonable therefore that they objected to its loss.

12. While I have found that a tree could reasonably be planted in an alternative location and still make a similar contribution to public amenity as the tree that has been removed, this is not to say that the Council did not raise legitimate concerns regarding the removal of a tree covered by a TPO at the time of the application.
13. While I have found that on the balance of probabilities the tree 0603 is unlikely to be covered by the TPO, I can understand the Council's concerns regarding the potential discrepancies prior to digital means of mapping being available. In any case, I found that its removal would not be materially harmful to the character and appearance of the area. However, I am aware that the effect of a proposed development on the character and appearance of an area is a relatively subjective matter, often determined by an exercise of judgement in the particularly circumstances of the case. While I have not agreed with the Council on this matter I am satisfied, from the contents of their application report and appeal statement that they have made a case, although limited, regarding the effect of the loss of the trees on the character and appearance of the area.
14. As a result I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.
15. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense has not been demonstrated. For this reason an award for costs is therefore not justified.

Zoe Raygen

INSPECTOR