
Costs Decision

Site visit made on 2 October 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 25th October 2017

Costs application in relation to Appeal Ref: APP/M2372/W/17/3179112 Land adjoining Moorthorpe Cottage, Chestnut Grove, Darwen BB3 2LQ

- 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 and Mrs I and K McInery for a full award of costs against Blackburn with Darwen Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The National Planning Practice Guidance (the 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 expense in the appeal process.
3. The NPPG sets out examples of unreasonable behaviour by local planning authorities, including failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. There is clearly a dispute between the parties as to whether the process in making a TPO requires an assessment of the amenity value of the tree/trees. The Council confirm that such an assessment was not carried out when the TPO, which is the subject of the appeal, was made. The procedural matters concerning this have not had any bearing on my consideration of the planning merits of the proposal. Nevertheless, the Council's case centres on the fact that the proposed trees to be removed are protected by the TPO, and therefore must have some amenity value. They rely on the judgement of the Council's Arboricultural Manager and the understanding of the public benefit and wider visual amenity value of the trees. However, there is no evidence to qualify this 'public benefit and wider visual amenity value'. There is no assessment of the role the effected trees have in the overall setting of the woodland and on the amenity of the area. Therefore, without this baseline assessment it is not possible to assess whether or not the loss of these trees would be harmful to the amenity of the area.
5. I find therefore that the Council has failed to produce evidence to substantiate its reason for refusal and has relied on vague and generalised assertions about the effect of the proposal unsupported by any objective analysis. In doing so,

they have acting unreasonably. As this was the only reason for refusal, the appellant should not have needed to submit the appeal and has incurred unnecessary expense in doing so.

Conclusion

6. I conclude therefore that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

7. 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 Blackburn with Darwen Borough Council shall pay to Mr and Mrs I and K McInery, the costs of the appeal proceedings described in the heading of this decision.
8. The applicant is now invited to submit to Blackburn with Darwen Borough 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.

Alexander Walker

INSPECTOR