



Costs Decision

Site visit made on 20 November 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 18th December 2017

Costs application in relation to Appeal Ref: APP/G2245/W/17/3181949 Vine Cottage, Grove Road, Penshurst TN11 8DU

- 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 Westphal for a full award of costs against Sevenoaks District Council.
 - The appeal was against the refusal of planning permission for the conversion of the existing barn to 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 Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The applicants seek a full award of costs on the basis that the Council was inconsistent in its decision-making in its first reason for refusal, concerning the Green Belt; specifically, how it applied similar policy requirements to schemes with similar levels of reconstruction works. They also claim that the Council failed to substantiate its second reason for refusal, concerning damage to protected trees, and that this matter could have been adequately covered by a planning condition, or addressed during the Council's consideration of the application, had it sought clarification.
 4. While the Council reached a different conclusion from me about the degree of reconstruction required for the conversion of the barn, it analysed the technical information, and evaluated it against policy and guidance. It distinguished the reconstruction details in the appeal proposal from the reconstruction of a similar, neighbouring scheme which the Council had approved, and which appeared to me to involve less reconstruction works than the appeal proposal. Assessing whether reconstruction is major or minor requires a degree of subjective perspective. On the evidence before it, the Council did not reach an unreasonable conclusion on this issue.
 5. The applicants had commissioned a tree survey, an arboricultural impact assessment and an arboricultural method statement to support their proposal. I understand the cautious approach of the Council regarding works in proximity to the protected trees. However, the information submitted with the planning application clearly demonstrated that the proposed access drive would be
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sufficiently clear of the root protection areas of retained trees to allow the installation of protection measures while providing sufficient working room for its formation. The submissions also suggested a tree specialist be appointed to supervise the works.

6. If the Council had considered that there was insufficient space to construct the driveway without harming the trees then a reason for refusal on that basis, if backed-up by evidence, may have been justifiable. There was sufficient detail in the application to decisively conclude on the tree issue one way or the other. In my judgement there would be no harm to the trees. However, there remained ample scope to apply conditions to ensure that the construction of the driveway and any excavations it may require would not risk the health of those trees. To ascribe a lack of detail about installation as a reason for refusal and to not substantiate this at appeal is unreasonable behaviour.
7. The PPG describes vague, generalised or inaccurate assertions about a proposal's impact unsupported by any objective analysis, and the failure to substantiate a reason for refusal on appeal as examples of unreasonable behaviour. Consequently, I find that in respect of the trees issue, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that therefore a partial award of costs is justified.

Costs Order

8. 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 Sevenoaks District Council shall pay to Mr & Mrs Westphal the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the reason for refusal concerning trees; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Sevenoaks District 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.

Patrick Whelan

INSPECTOR