



Costs Decision

Site visit made on 20 May 2019

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2019

Costs application in relation to Appeal Ref: APP/C2708/W/19/3220912 Land to the west of Bell Busk Lane, Coniston Cold, Skipton BD23 4EA

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr M Bannister, Coniston Estate for a full award of costs against Craven District Council.
 - The appeal was against the refusal of planning permission for the demolition of outbuildings to the north of the existing barn, conversion of existing barn to 2 dwellings, and construction of 6 dwellings (revised scheme pursuant to extant planning permission 19/2009/9478 for the development of 14 dwellings).
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Decision

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

Reasons

2. 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 costs to incur unnecessary expense in the appeal process.
3. The application centres on the applicant's claim that the Council's Planning Department (a) made vague, generalised and inaccurate assertions about the proposal's impact, which were not supported by objective analysis and evidence, particularly in relation to ground levels, visual impact, character and arboricultural impact, (b) failed to provide continuity of officer advice following a change in case officer, with particular reference to design issues, (c) failed to assess the proposal against the correct development plan policies, (d) denied the applicant opportunity to fully address arboricultural matters through failing to fully notify them of the tree officer's concerns, and (e) denied the applicant opportunity to address key issues raised by a third party.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal, act inconsistently or contrary to policy, or lack co-operation.
5. Regarding matter (a) ground levels, I see evidence in External Works Layout drawings 17038-C-50A and 17038-C-53, and Site Survey drawing Site.Dwg Rev.A of levels information which is consistent with the Council's stated understanding of existing and proposed ground levels across the site. Regarding visual impact and character, these are matters of judgement and I consider that the Council has set out its rationale on these matters sufficiently

reasonably in the Planning Officer's Report on application Ref: 2018/19143/FUL.

6. Regarding tree T1, it will be clear from my decision that I find the applicant's evidence to be incomplete in respect of a number of arboricultural matters. The Council made its decision, informed by the consultation response of the tree officer. The planning decision is a matter of judgement and I consider that the Council was reasonable in exercising its judgement as it did, given the concern to safeguard the large, mature, protected tree.
7. Turning to matter (b), I note the appellant's concerns. However, I do not find the Council's conclusions on the proposal to be inherently unreasonable, being matters of planning judgement, based on an assessment of the proposal's merits.
8. In respect of matter (c), the Council accepts that it 'erroneously' included Saved Policies ENV1 and ENV2 of the Craven District (Outside the Yorkshire Dales National Park) Local Plan (1999) (LP) in its reasons for refusal. Nevertheless, I see evidence in paragraph 9.10 of the Planning Officer's Report on application Ref: 2018/19143/FUL of explanation of Saved Policy H4 of the LP, with particular reference to conserving and protecting the quality of the environment, and avoiding adverse effect on the surrounding landscape.
9. Furthermore, section 9 of the report provides analysis of the effects of the development, and the reasons for refusal explain why the Council considers that the proposal would conflict with Saved Policies H4 and ENV10 of the LP. As such, I find that the Council's rationale for refusal is sufficiently set out in its Planning Officer's Report, and that its citation of H4 and ENV10 provide sufficient policy grounds for the Council's decision. Moreover, the Council promptly advised the applicant after the decision on application Ref: 2018/19143/FUL that it would not rely on ENV1 and ENV2 in the refusal.
10. Regarding matter (d), the planning case officer's email to the applicant's agent of 3 July 2018 indicates that although concern about the proposed pruning of tree T1's west limb was raised with the applicant prior to determination of the application, the tree officer's concern about the effect of creating the 'island' around the tree was not. It would have been helpful for the Council to have explicitly communicated the tree officer's concern about the island to the applicant. Nevertheless, it would have been consistent with a 'precautionary' approach to arboricultural matters for the applicant's Arboricultural Impact Assessment to have included an analysis of the effect of the 'island', given the maturity and importance of the tree.
11. With regard to matter (e), the applicant sets out that they did not have sight of a number of neighbour objections from occupants of the Old School House, before the application was determined. Given the extensive range of issues raised in the representations, I find that the Council acted unreasonably in not communicating them to the applicant. However, it is not clear which, if any, issues raised in those representations and relevant to the reasons for refusal, the applicant was not already substantially aware of. As such, there is insufficient evidence to make a clear finding on whether or not the applicant was disadvantaged in this respect.
12. Having regard to all the above, I find that the Council gave sufficient reasons for its refusal of planning permission, in relation to impact on the character and

appearance of the Coniston Cold Conservation Area, including the mature, protected tree.

13. To conclude, I find as follows in respect of the above matters: (a) the Council made an informed judgement about the proposal's impact and gave sufficient reasons for refusal of planning permission; (b) the Council was entitled to evolve its view before coming to a decision; (c) the Council provided sufficient policy grounds for refusal; (d) both the Council and the applicant could have addressed this matter more proactively, and it was not solely determinative, and (e) the Council acted unreasonably.
14. As a result it follows that I cannot agree that the Council has acted unreasonably in this case in respect of matters (a) to (d). Whilst I find that the Council has acted unreasonably in respect of matter (e), there is insufficient evidence to make a clear finding on whether or not the applicant was consequently put to unnecessary or wasted expense.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for costs fails.

William Cooper

INSPECTOR