



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 Craven District Council against for a full award of costs against Mr M Bannister, Coniston Estate.
 - 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).
-

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 Council's claim that the appellant (a) provided inaccurate assertions about proposed pruning and the impact of excavation on a protected tree, and (b) pursued an appeal which has no reasonable chance of succeeding.
4. PPG indicates that appellants will be at risk of an award being made against them if they provide manifestly inaccurate information, or if they pursue an appeal which has no reasonable prospect of succeeding.
5. Regarding matter (a), it will be clear from my decision that I consider the proposal lacks substantive analysis of the effect on T1 of the proposed creation, through substantial ground excavation close to the RPA, of an 'island' of land around the tree. However, I also consider that it would have been helpful for the Council to have explicitly communicated the tree officer's concern about the 'island' effect to the appellant.
6. In respect of the proposed pruning of tree T1's limb, it will be clear from my decision that I consider this would potentially aid its safe management during construction phase, and possibly beyond, minimising risk of damage to the tree, whilst not being absolutely essential for the development to proceed. The likelihood of failure of the end of the limb, outside the construction period, is

not entirely clear. Whilst my decision shows that I find the applicant's evidence to be incomplete in respect of a number of arboricultural matters, I find that it has not been demonstrated that the appellant provided manifestly inaccurate and inconsistent arboricultural information in respect of the tree pruning rationale and the 'island effect' on T1.

7. Turning to matter (b), assessment of the proposed development's effect on the character and appearance of Coniston Cold Conservation Area is a matter of judgement. The appellant provided a comprehensive case for the proposal. Whilst it will be clear from my decision that I do not agree with the appellant's conclusions about the impact of the proposed development, in this case the decision is one which is a matter of judgement. The fact that permission was granted for an alternative scheme for the site¹ after refusal of the appeal proposal, did not preclude the appellant from pursuing their appeal². Having regard to all the above, including the arboricultural aspects under matter (a), I find that it was not inherently unreasonable for the appellant to pursue an appeal against the refusal of planning permission.
8. To conclude, I find as follows in respect of the above matters: (a) it has not been demonstrated that the appellant provided manifestly inaccurate and information about proposed pruning and the impact of excavation on a protected tree; and (b) it was not inherently unreasonable for the appellant to pursue an appeal against the refusal of planning permission.
9. As a result it follows that I cannot agree that the appellant has acted unreasonably in this case.

Conclusion

10. 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

¹ Ref: 2018/19704/FUL.

² In respect of refusal of planning permission for application 2018/19143/FUL.