



Costs Decision

Site visit made on 2 July 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Costs application in relation to Appeal Ref: APP/B2355//W/19/3226418 Land off Belgrave Street, Rising Bridge, Haslingden BB4 5JH

- 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 Paul Canavan for a full award of costs against Rossendale Borough Council.
 - The application Ref 2018/0512, dated 15 October 2018, was approved on 5 December 2018 and planning permission was granted subject to conditions.
 - The application sought planning permission for erection of stable block with a variation to the facing materials of the stable block following planning permission Ref 2012/0555 granted on 21 November 2012.
 - The condition in dispute is No 2 of application ref:2018/0512 which states that: *Prior to first use of the stable block hereby permitted the scheme of hard-landscaping and boundary treatment submitted and approved under Application 2013/038 shall be implemented, entailing provision of the area of hard-surfacing to enable a vehicle (with horse-trailer) to park and turn within the site (without obstruction of the public footpath crossing the site) and the replacement of the existing boundary fences with 1.5m high timber post-&-wire perimeter fencing, unless a variation has first been agreed in writing by the Local Planning Authority. In the first available planting season thereafter the hawthorn/blackthorn hedge forming part of scheme of landscaping and boundary treatment submitted and approved under Application 2013/038 shall be implemented and any plants which are removed, die or become seriously damaged or diseased within 5 years of planting shall be replaced in the next available planting season by others of the same siting/size/species unless a variation has first been agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To safeguard the essentially open and rural character of the Green Belt/Countryside.*
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's substantive claim for full costs is on the basis that the Council have imposed a condition that does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations. It is further claimed that the Council chose to add a new condition to an application made solely to change the external materials and that, in any event, a condition relating to landscaping and boundary fencing had already been

- discharged and without any reference or requirement being made to replace the existing treatment with 1.5m high post and wire fencing.
4. The appeal followed the Council's decision to approve an application submitted under section 73 of the Town and Country Planning Act 1990 (TCPA) to vary a condition associated with a previous planning permission.
 5. Where an application under section 73 is granted, the PPG¹ confirms that the effect is the issue of a new planning permission. Moreover, the PPG is also clear that new conditions can be imposed, as long as they do not materially alter the development that was subject to the original permission and are conditions which could have been attached to the earlier planning permission², which I found to be the case in my decision.
 6. Consequently, irrespective of whether a landscaping and boundary treatment relating to the stable block had already been discharged, the Council did not act unreasonably in imposing a new condition on a new permission.
 7. Furthermore, in determining the appeal, I have concluded that this new condition (No 2) was necessary and relevant to planning and to the development being permitted and reasonable in all other respects. However, as worded, it was insufficiently precise nor enforceable. Nevertheless, in this regard, I do not find that the Council acted unreasonably in principle in including such a condition.
 8. Following the Council's decision, the applicant had a choice as to whether or not to go back to the Council with the information to discharge Condition 2 or to pursue the appeal. In engaging in the latter, I accept that the applicant has incurred some additional expense. However, these were neither wasted or unnecessary as the appeal provided the applicant with the opportunity to present further evidence to be considered as part of the appeal process. Furthermore, it has resulted in the disputed condition being deleted and substituted for a varied condition providing clarity as to the required details and to allow a further landscaping and boundary treatment to be submitted to the Council for approval.

Conclusion

9. I therefore find that unreasonable behaviour, resulting in unnecessary expense as described in the PPG, has not been demonstrated and an award for costs is not justified.

Kate Mansell

INSPECTOR

¹ PPG Paragraph: 015 Reference ID: 17a-015-20140306 (Revision date 06 03 2014)

² PPG Paragraph 40 Reference ID: 21a-040-20190723 (Revision date 23 07 2019)