



Costs Decision

Hearing Held on 6 August 2019

Site visit made on 6 August 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2019

Costs application in relation to Appeal Ref: APP/W4705/W/18/3215045 Arden, Gilstead Lane, Gilstead, Bingley BD16 3LN

- 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 D M Regan for a full award of costs against City of Bradford Metropolitan District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for construction of new four bedroom detached dwelling with detached car port, driveways and landscaping.
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Costs application in relation to Appeal Ref: APP/W4705/W/19/3230049 Arden, Gilstead Lane, Gilstead, Bingley BD16 3LN

- 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 D M Regan for a full award of costs against City of Bradford Metropolitan District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for construction of new four bedroom detached dwelling with detached car port, driveways and landscaping. Construction of linked garage extension to existing 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 advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for a full award of costs was made at the hearing and is a single application that relates to both appeals.
4. The appellants' application for an award of costs is predicated on the grounds that the Council did not act in a pro-active and co-operative manner during the consideration of the planning applications that form the subject of the appeals; did not raise a matter which later became a reason for refusal during the course of the consideration of the applications; that the Council have not submitted evidence to substantiate the reasons for refusal and have made vague, generalised or inaccurate assertions about the proposal's impact, which

- are unsupported by any objective analysis; did not provide the Arboricultural officer's comments to the appellant; refused the appeal proposals for reasons that could have been addressed by a planning condition; and did not carry out a planning balance exercise when determining the applications.
5. The National Planning Policy Framework (the Framework) sets out that local planning authorities should approach decisions on proposed development in a positive way and work proactively with applicants to secure developments that will improve the economic, social, and environmental conditions of the area. This is a broad policy aim and does not specifically require a local planning authority to strive to make all development proposals acceptable once a planning application has been submitted. Although the applicants for planning permission can suggest amendments to an application that they have submitted, local planning authorities can request that amendments be made, and it is good practice for a local planning authority to try and resolve minor defects in planning applications if this can lead to a planning permission being granted, there is ultimately no legal requirement or duty for the Council to enter into negotiations on the substance of a proposal. The Council set out that it considered that the matters leading to refusal of the first planning application (the subject of Appeal A) should have been addressed in the submission of the second application (the subject of Appeal B). Whilst some further information was submitted with the second planning application and the proposal included the proposed garage extension, in many respects the second application was very similar in form and content to the initial planning application. In this overall context it was not unreasonable for the Council to not actively negotiate on the proposals.
 6. In respect of the reasons for refusal that relate to character and appearance, whilst the evidence indicates that discussions on the original proposal focussed on matters relating to trees, ultimately it is for the Council when making its decision to consider the matters that are relevant to the proposal and whether the proposal complies with the development plan. The Council concluded that various aspects of both proposals would be harmful to the character and appearance of the area and as such would conflict with policies in the development plan. The Council have submitted a statement of case to supplement the planning officer's reports on the proposals which sets out why it considered the proposals would be harmful. Whilst this evidence is not extensive, it is not so brief that the reasons for the council's decisions are not clear and these are also related to development plan policies. I have found on the basis of the evidence before me and from visiting the site that the proposals would cause harm to the character and appearance of the area, and consequently do not find that the Council acted unreasonably in respect of these matters.
 7. Neither of the planning officer's reports in respect of the planning applications includes a section relating to a planning balancing exercise. Sections 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that in making decisions, regard shall be had to the provisions of the development plan and that decisions must be made in accordance with the plan unless material considerations indicate otherwise. Whilst the officer's reports assess the proposals against the development plan they do not explicitly identify or set out any other material considerations that might have had a bearing on the decision. Although this is an omission in the reports, in my consideration of the appeals, I have not

found any material considerations that would overcome the conflict with the development plan. In the event that the Council had carried out a planning balance exercise, I do not consider that it would have reached a different decision in either case and, consequently, do not find that it has acted unreasonably in this regard.

8. Whilst it is suggested that the Council's Arboricultural Officers comments were not made available to the appellant, the Council stated that these were published on its website and I have no substantive evidence to indicate that this was not the case. It is also clear from the appeal submissions that the appellants had a good grasp of the Council's concerns and as such, in the event that these comments were not available online, there is nothing to indicate that they have been disadvantaged.
9. With regard to the effect of the proposed garage extension on the beech tree in the neighbouring garden, the Council's position is that it did not have the full details of the foundation and drainage design, or specific details of the crown lifting. The arboricultural assessment submitted with the planning application set out the broad principles of what was proposed. Other than citing lack of details, the Council did not submit any technical assessment that would indicate the proposal would cause harm to the protected tree. Whilst lacking in specific detail there was sufficient information within the application that, in combination with a site visit, would have allowed the detailed design matters and pruning works to have been addressed by way of a planning condition. In this respect I find that the Council have acted unreasonably. As the matter could have been addressed by way of a condition, the appellants have incurred unnecessary expense in having to address this aspect of the appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 the City of Bradford Metropolitan District Council shall pay to Mr and Mrs D M Regan, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and submitting evidence and attending the hearing to present the case in respect of Reason for Refusal 2 of planning application reference 18/04964/FUL relating to the effect of the proposed garage extension on the protected tree within a neighbouring garden; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the City of Bradford Metropolitan 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.

John Dowsett

INSPECTOR