



Costs Decision

Site visit made on 3 September 2019

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2019

Costs application in relation to Appeal Ref: APP/H3510/W/19/3229153 La Grange House, Fordham Road, Newmarket, CB8 7AA

- 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 Marcus Worsley for a full award of costs against Forest Heath District Council.
 - The appeal was against the refusal of planning permission for the erection of dwelling – revision to scheme approved under F/2012/0627/FUL.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the Planning Practice Guidance states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant states that considering the tangible evidence they have provided, and lack thereof from the Council's Tree Officer in making his decision, the Council has behaved unreasonably in determining the planning application.
5. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 and the Forest Heath Core Strategy Development Plan Document 2001-2026 adopted May 2010 that the proposals would be in conflict with.
6. The proposals were amended during the application process and it is noted that there are some references within the Officer Report to the original scheme. In their determination of the appeal scheme though the Council did correct these references within the 'Development Control Committee Wednesday 6 February 2019 Late Papers' document. (DCCLP)

7. From this, and the correspondence between the appellant and the Council during its consideration of the application, it is clear that the Tree Officer and Case officer were aware of the amended scheme and had been in discussion with the appellant regarding the impact of the tree and shading prior to the Council's determination of the application.
8. A Shade analysis is one tool that can be utilised in assessing the impacts of a development, but it does only provide a guide, and achieving minimum criteria does not necessarily equate to an acceptable development.
9. The concerns of the Tree Officer are clearly set out in their comments and are adequately substantiated by the Council in the Officer Report. The Officer refers to the submitted Hayden's Arboricultural consultants Shade Analysis (SA), and it is clarified within the DCCLP that this relates to the amended plans. The Council did not dispute the findings of the SA and it is clear that they considered it along with other aspects of the proposal, such as proximity to the tree, layout and design, in their determination of the application.
10. For the reasons set out in the appeal decision I too have concerns regarding shading and seasonal nuisance from the tree and I came to that decision on the basis of my consideration of the details and merits of the scheme, having regard to all the evidence submitted.
11. Accordingly, I do not consider the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

A Denby

INSPECTOR