

Costs Decision

Site visit made on 22 October 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Costs application in relation to Appeal Ref: APP/C1055/W/19/3234965 Shelton Junior School, Carlton Avenue, Derby DE24 9EJ

- 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 Shelton Junior School for a partial award of costs against Derby City Council.
 - The appeal was against the refusal of planning permission for the installation of a 2400 mm height, welded mesh fencing in RAL 6005 (Moss Green) to a number of school field perimeters. The installation of new 4000mm width, double gate top allow access to the field for mowers and maintenance.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The 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 applicant's substantive claim for costs is submitted on the basis of unreasonable behaviour. Having regard to guidance within the PPG, the applicant contends that the Council failed to produce evidence to substantiate the reasons for refusal, nor did it present evidence or objective analysis of the points raised within them. Consequently, it prevented or delayed development which should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.
4. The application does not state whether a full or partial award of costs is sought. However, it makes specific reference to a request for costs to cover the instructing of a planning consultant to make the appeal. I have therefore interpreted it as an application for a partial award of costs and I shall consider it on that basis.
5. I appreciate that a planning decision is one that is a matter of judgement. I am mindful that Committee Members are entitled not to accept the professional advice of Officers, based upon their consideration of the Officer report and proposal, neighbour representations and their knowledge of the site and surroundings, so long as a case can be made to the contrary.
6. However, the minutes of the planning control meeting of 14 February 2019 do not explain why the proposal would be harmful to the living conditions of adjoining dwellings nor why it would harm the character and appearance of the

area. Furthermore, even if matters of design and living conditions were considered to be qualitative, the Council does not, in my view, submit reasonable evidence within its statement to substantiate its case against relevant national and local policies.

7. In the absence of any substantially more detailed evidence, it appears to me that in the planning judgement, having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to guidance within the PPG.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs, to cover the instructing of a planning consultant to make the appeal, is justified.

Costs Order

9. 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 Derby City Council shall pay to Shelton Junior School the costs of the appeal proceedings described in the heading of this decision, limited to those costs to cover the instructing of a planning consultant to make the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the 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.

Kate Mansell

INSPECTOR