
Costs Decision

Site visit made on 25 February 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2020

Costs application in relation to Appeal Ref: APP/X0360/W/19/3238448 Land off Coombes Lane, Coombes Lane, Arborfield RG2 9JG

- 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 Ms Sara Saund for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of planning permission for the proposed installation of timber stake & plain wire fencing and 2no gates.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The application needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes both procedural matters and substantive matters, such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations; failure to produce evidence to substantiate the reason for refusal on appeal; and vague and generalised or inaccurate assertions about a proposal's impact which are unsupported by an objective analysis.
4. The applicant's costs application states that the unreasonable behaviour of the Council has caused an unnecessary appeal and additional work to the applicant. In particular, the costs application includes matters that the development would otherwise be permitted development and thus cannot be described as unacceptable in principle; there is no reasonable basis on which it could be argued that the proposed development would harm the wider character and landscape in a context where such development can be seen to exist; it is unreasonable to suggest that the proposal would cause damage to certain interests; and no information regarding harm to wider interests was requested from the Council during consideration stage.
5. The Council made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, which came into

force on 23 January 2019, for an area of The Coombes woodland which includes the appeal site. This restricts certain permitted development rights including the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Consequently, whilst fencing of the type proposed may normally constitute permitted development, this is not the situation at the appeal site. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, planning decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

6. The officer's report provides an assessment of the character and appearance of the area and it refers to the Wokingham District Landscape Character Assessment, which sets out the key characteristics of the area. The relevant policies were cited and the planning officer used professional judgment in considering the effect of the proposal on the character and appearance of the area. Furthermore, the Council's appeal statement also sets out its concerns and how it considers these arise with a satisfactory level of detail. Whilst I have reached a different conclusion in respect of the effect of the proposal on the character and appearance of the area, this is a matter of planning judgment. Therefore, in this respect the Council has not behaved unreasonably.
7. As can be seen from my appeal decision, I agree with the Council that the proposal contains insufficient information with regard to the effect of the proposal on protected trees and protected species. Therefore, I find that the Council was not unreasonable to refuse planning permission on these grounds.
8. Whilst the Council could have highlighted the need for additional information during their consideration of the planning application, I am not aware that the applicant engaged with the Council before submitting the planning application. Pre-application discussions would have been an ideal opportunity to deal with any concerns in a proactive manner. I have no evidence that a pre-application service is not available to the applicant. Furthermore, I cannot be certain that had additional information been provided in advance of the Council's decision this would have overcome the Council's concerns and changed the outcome.
9. Taking the above into account, I conclude that it has not been demonstrated that the Council behaved unreasonably or that it caused unnecessary or wasted expense for the applicant in the appeal process as a result.

Conclusion

10. For the reasons given above, I determine that the costs application should fail and no award is made.

C Osgathorp

INSPECTOR