



Costs Decision

Site visit made on 31 January 2020

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 7th April 2020

Costs application in relation to APP/F3545/W/19/3238557 High Trees, The Park, Great Barton IP31 2SX

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs D Doran Estate for a full award of costs against West Suffolk Council.
 - The appeal was against the refusal of planning permission for erection of a two storey dwelling and a detached double garage and creation of a shared access.
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Decision

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

Reasons

2. 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 application essentially relies on the fact the Council Planning Officer recommended that planning permission be granted for the proposal, but that the Members took a different course of action. The application centres on the applicant's claim that the Council (a) failed to produce evidence to substantiate the reason for refusal, (b) made vague, generalised and inaccurate assertions about the proposal's impact, which were not supported by objective analysis and evidence, (c) failed to determine similar cases in a consistent manner, and consequently, prevented development which should have been permitted.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or act inconsistently.
5. It is appreciated that the outcome of the application will have been a disappointment to the applicant. Despite the application being recommended for approval by the Council Planning Officer, Members took a different view and the application was refused. Council Members are not however duty bound to follow the advice of the Planning Officers and are entitled to come to a decision against the officer's recommendation. In addition, the planning decision is a matter of judgement.
6. Regarding matters (a) and (b), the Council set out in the reason for refusal in its Decision Notice that it considered the proposal would have a detrimental impact on the character and appearance of the protected wooded area, due to

- the following combination of factors: the felling of the trees, erection of a dwelling and likely introduction of domestic paraphernalia. The Council also referred to likely increasing pressure for works to be undertaken to retained trees, or their removal, given their close proximity to the proposed dwelling.
7. In the reason for refusal, the Council sets out the context that the woodland on the site is part of a wider area known as The Park. This aligns with supporting text paragraph 30.5h) of the St Edmundsbury Rural Vision 2031 (2014) (RV), which is referenced in paragraph 35 of the Case Officer's Report to the Development Control Committee of 4 September 2019 (COR). The latter sets out that paragraph 30.5 h) 'recognises that there is an important area called The Park which should be protected due to its distinctive historical character. The local distinctiveness of this area will be protected through policies in the Development Management Policies document'.
 8. The reason for refusal makes clear reference to the following development plan policies: DM2 of the Joint Development Management Policies Document (2015) (DMP) and Policy CS3 of the St Edmundsbury Core Strategy (2010).
 9. Policy RV18 of the RV, which is not engaged in this case, is included on the Decision Notice. It would have been clearer for readers for the Council to have not included a list of policies, including RV18, on the Decision Notice. However, Policy RV18 is not included within the reason for refusal itself and, as such, did not compromise the latter's substance.
 10. The reason for refusal includes reference to the National Planning Policy Framework (the Framework) amongst policies which seek to preserve important landscape characteristics which make a significant contribution to the character and appearance of the area. It would have been helpful for the Council to clearly reference specific policy within the Framework. However, this omission does not diminish the clarity of reference to relevant development plan policies.
 11. Notwithstanding the recommendation for approval in the COR, I see evidence in the COR of description of a number of concerns raised by a variety of parties, in relation to the effect of the proposal on the character of the Park area and its protected trees. These include the following. Whilst accepting a mitigative planning condition approach, the Council's Arboriculture Officer expressed concerns regarding future pressure for tree works, sufficient to raise the possibility of future Tree Preservation Order works applications of such potential detriment as to produce a response of heavy resistance. It is also set out there were local residents' concerns about loss of trees, impact on trees to be retained and adverse effects on the character of the area.
 12. I note the appellant's report that no questions were addressed to their Agent during the Development Control Committee meeting, and a number of Members' queries were unanswered. Nevertheless, it is not disputed that the Development Control Committee visited the appeal site and discussed the case before voting on it.
 13. To conclude on matters (a) and (b), I find that the Council made an informed judgement about the proposal's impact and gave clear reasons for refusal of planning permission, with reference to relevant development plan policies, in relation to character and appearance.

14. With regard to matter (c), the appellant considers that the Council has failed to exercise consistency between its decision on the appeal proposal and other planning cases within the Park area, with particular regard to mitigative landscaping and the importance of protecting trees within the Park.
15. It will be clear from my decision that - in respect of similarities and differences between the current appeal proposal, Planning Appeal Ref: APP/E3525/W/15/3141032 (Greenover) and Planning Application Ref: DC/18/1650/FUL (Land adjacent Berwyn) - I consider it reasonable to assess the case on its own merits. Full details of other cases since 1974¹, to which my attention is drawn in relation to this costs application, are not before me such as to alter my decision.
16. In this case the decision is one which is a matter of judgement. Accordingly, Council Members were entitled to reach a different decision compared to that recommended by the Planning Officer, given evident local concerns about the effect of development on the character of The Park area, including existing protected woodland.
17. To conclude, I find as follows in respect of the above matters: (a) and (b) the Council made an informed judgement about the proposal's impact and gave sufficient reasons for refusal of planning permission, with sufficient policy grounds; (c) the Council was not demonstrably inconsistent in its decision making. Consequently, the Council did not prevent development which should have been permitted.
18. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for costs fails.

William Cooper

INSPECTOR

¹ Planning Application Refs: E/74/1582/P, E/92/2524/P, E/96/3023/P and SE/06/2899.