



Costs Decision

Hearing Held on 15 September 2020

Site visit made on 16 September 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Costs application in relation to Appeal Ref: APP/P2365/W/20/3249244 Land between 321 and 325 Mossy Lea Road, Wrightington, Lancashire

- 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 Neil Andrews for a partial award of costs against West Lancashire Borough Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant outline planning permission for the erection of two detached dwellings.
-

Decision

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

The submissions for Mr Neil Andrews

2. The applicant is seeking a partial award of costs in relation to two matters.
3. Firstly, that the Council's officer report is ambiguous in relation to the issue of Paragraph 145 e) of the National Planning Policy Framework 2019 (the Framework) and the need for a subsequent assessment of the impact of the proposal on the openness of the Green Belt. The Council did not provide a Statement of Case, relying instead upon its officer report. Furthermore, in the applicant's view, there was very limited engagement from the Council with the preparation of the Statement of Common Ground (SOCG). As a result, the applicant was unclear, at the time of the Hearing, what the Council's position was in relation to this important issue and so had to prepare to address it.
4. Secondly, from the discussions at the Hearing and the Council's suggested conditions, that the Council's second reason for refusal concerning the impact of the proposal on protected trees, was not justified. The applicant's view is that the Council's concerns could have been satisfactorily addressed through conditions or a legal agreement related to the Landscaping reserved matter.

The response by West Lancashire Borough Council

5. In response, the Council disagreed with the applicant's assessment of the officer report and considered that its first reason for refusal was clear. With regard to the SOCG and the officer report, the Council acknowledged that there was an inconsistency, but that this was the result of them misunderstanding the intention of paragraph 6.2 of the SOCG.
6. With reference to its second reason for refusal, the Council maintained that this reason was justified, with particular regard to Policy EN2 of the West

Lancashire Local Plan October 2013, and that undue weight was being given to the comments of the Arboricultural Officer in this regard.

Reasons

7. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Costs Matter One

8. Looking at paragraph 6.10 of the Council's officer report in isolation, the Council's reasoning and conclusion are somewhat unclear in terms of whether they consider the site to be in a village.
9. Nevertheless, the first sentence of Paragraph 6.12 of the officer report confirms that there is no openness test contained within Paragraph 145 of the Framework for 'limited infilling in villages'.
10. Furthermore, the conclusion of paragraph 6.14 of the officer report clearly separates the assessment of whether the proposal would be inappropriate development - as a result of it not being limited infilling in a village - from the assessment of openness.
11. As the Council found the proposal to be inappropriate development and as no assessment of openness had been required to reach this conclusion, the Council was right to go on and make such an assessment.
12. There is some confusion in the wording of the Council's officer report. Its erroneous consideration of the caselaw¹ referenced by the applicant, specifically the pertinence of the re-determination decision, is unhelpful. However, to my mind it is still reasonably clear from the officer report what the Council's position is in relation to Paragraph 145 e) and openness.
13. In light of this, paragraph 6.2 of the SOCG, which the Council has formally agreed, is confusing. I note that the Council claims this was a misunderstanding, but the wording is clear and conflicts with the referenced caselaw and its officer report. This is unreasonable behaviour from the Council.
14. However, the applicant raised this issue and the interpretation of the referenced caselaw in their Planning Statement and in their Statement of Case. As such the applicant was already clearly familiar with it well before the Hearing. No significantly different arguments were put forward at the Hearing to those provided in the previously submitted evidence.
15. It is not, therefore, clear to me that the applicant has incurred unnecessary or wasted expense as a result of this unreasonable behaviour.

Costs Matter Two

16. With regard to the second matter, I have addressed whether the Council's second reason for refusal is justified in my main decision and I do not intend to repeat that in detail here.

¹ *Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195*

17. Suffice to say that I am not satisfied from the evidence that the removal of the two trees (T1 and T2)² could be acceptably mitigated by replacement trees within the appeal site. Therefore, I am not content that this matter could be effectively controlled by suitably worded conditions or a legal agreement related to the Landscaping reserved matter.
18. I also found that a third protected tree (T10) would be at an unacceptable risk of damage as a result of drainage infrastructure passing through its Root Protection Area.
19. Consequently, as set out in my main decision, I am satisfied that the Council's second reason for refusal is justified and so is not unreasonable behaviour.

Other Matters

20. There are some confusing elements within the Council's evidence in relation to protected trees, including inconsistencies with previously submitted evidence and introducing new evidence during the Hearing. This is somewhat unreasonable behaviour.
21. However, this does not directly address the second costs matter and in any event, it is not evident that the applicant has incurred additional costs beyond what would normally be expected as a result.

Conclusion

22. With regard to Costs Matters One and Two, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.
23. For the reasons given above, and taking all relevant matters into account, I conclude that an award of costs is not justified.

Andrew Parkin

INSPECTOR

² As shown on drawing 16/048/01 C.