
Costs Decision

Site visit made on 29 September 2020 by Alex O'Doherty LLB(Hons) MSc MRTPI

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 November 2020

Costs application in relation to Appeal Ref: APP/T0355/W/20/3252103 19 Llanvair Drive, Ascot SL5 9HS

- 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 & Mrs Chohan & Bains for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
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Decision

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

Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the costs application.

Procedural Matter

3. For the avoidance of doubt, the appeal decision has not been affected by the application for costs. The two matters are entirely separate.

Reasons for the Recommendation

4. The Planning Practice Guidance (PPG) advises that 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.
5. This application for costs relates to the Council's behaviour in refusing to grant approval for foundation details which were required to be submitted by condition No 7 of the original planning permission¹. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application².

¹ Local Planning Authority reference: 19/01050

² Paragraph: 050 Reference ID: 16-050-20140306

6. However, whilst the Council's decision notice stated that any incursion into the root protection areas (RPAs) of the trees in question would mean that their long-term retention could not be guaranteed, several qualified arborists provided evidence and analysis which clearly indicated that the scheme before the Council was acceptable based on current arboricultural practice and understanding. This evidence confirmed that whilst an incursion into the RPAs would occur, the two trees would not be adversely affected. As such, due to the large body of evidence submitted by several professional arborists before the Council, it was clear that the proposal was in accordance with the development plan.
7. The Council's failure to heed the evidence submitted by several qualified professionals, and their insistence on a proposal that would not result in 'any incursion', was unreasonable. This unreasonable behaviour resulted in the wasted expense of the whole costs for the statutory planning appeal process, including the preparation of the appeal statement, the final comments statement, and all supporting documentation. Additionally, wasted expense occurred in the making of the costs application.

Conclusion and Recommendation

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Alex O'Doherty

APPEAL PLANNING OFFICER

Inspector's Decision

9. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application for a full award of costs is allowed.

Costs Order

10. 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 the Council of the Royal Borough of Windsor and Maidenhead shall pay to Mr & Mrs Chohan & Bains, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to the Council of the Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

RC Kirby

INSPECTOR