
Costs Decision

Site visit made on 15 February 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2021

Costs application in relation to Appeal Ref: APP/X0360/W/20/3262427 123 Loddon Bridge Road, Woodley RG5 4AG

- 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 Wokingham Borough Council for a full award of costs against Mr H Kang.
 - The appeal was against the refusal of planning permission for boundary wall (brick with iron rail) new side access and cross-over to front drive.
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Decision

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

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 PPG makes it clear that the right of appeal should be exercised in a reasonable manner. It sets out at paragraph 53¹ that an appellant is at the risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding.
4. The Council has applied for costs on the basis that the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
5. In this case, there has been a previous appeal² for the erection of a boundary wall which was dismissed. Whilst the current appeal proposed a reduction in the height of the wall, it occupied the same footprint.
6. The Inspector for the earlier appeal commented about the absence of a protected tree from the plans and that no method statement to indicate how the tree could be protected during construction had been provided. The applicant had not addressed these concerns in the resubmission scheme as the submitted plans did not show the tree. The applicant also failed to provide an

¹ Paragraph: 053 Reference ID: 16-053-20140306

² APP/X0360/D/19/3236804

updated arboricultural assessment showing how the tree would be protected during construction. Despite requests from the Council over more than a three week period, this information was not provided. The Council therefore went on to determine the application.

7. The applicant submitted an updated Tree Protection Plan³ to the Council the day after it had made its decision. This information was also submitted some weeks into the appeal process.
8. In this regard, I am also mindful of the advice set out in paragraph 52⁴ of the PPG which sets out that unreasonable behaviour includes only supplying relevant information at appeal when it was requested, but not provided, at application stage.
9. The applicant has acted unreasonably both substantively and procedurally. Substantively, by appealing against a decision that followed a similar decision made in an appeal decision in relation to what is substantially the same case; and procedurally by failing to provide information requested at the application stage, which he later provided at appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

11. 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 Mr H Kang shall pay to Wokingham Borough Council, 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.
12. The Council is now invited to submit to Mr H Kang, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Rachael Pipkin

INSPECTOR

³ Drawing Number: 105/14056/3/2020 TPP dated 18 August 2020

⁴ Paragraph: 052 Reference ID: 16-052-20140306