
Costs Decision

Site visit made on 23 March 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Costs application in relation to Appeal Ref: APP/U4230/W/20/3263539 The Spinney, 482 Walkden Road, Worsley, Salford M28 2WH

- 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 Joseph Lazare (JAL Group) for a full award of costs against Salford City Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of 4no. detached dwellings with associated access, landscaping and car parking.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. The PPG advises that local planning authorities (LPAs) are at risk of an award of costs for introducing fresh and substantial evidence at a late stage or for vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. An LPA is not duty bound to follow the advice of its professional officers. However, if a different decision is reached, the LPA must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to support that reasoning.

Reason for Refusal 1

4. In support of their application, the appellant submitted drawings, photographs and diagrams which drew comparisons between the proposed development and existing housing nearby, including with regard to plot sizes and the size and spacing of buildings. Extracts from that analysis were included in the report to the LPA's Planning and Transportation Regulatory Panel (the Panel). It is thus clear that the LPA had regard to those submissions in reaching its decision.
5. However, it is evident from the LPA's statement that the Panel considered the appeal site to be distinctive from those other nearby residential developments referred to in the appellant's analysis. Specifically, the LPA's statement refers to the site being 'distinguished by its openness and verdant characteristics, as opposed to the higher density of residential development behind' and sets out

the Panel's view that housing on some of those nearby streets, set back further from Walkden Road, did not form part of the area's character and that the development need not necessarily take cues from it.

6. The LPA's statement refers to the comparative analysis provided by the appellant. However, it clearly sets out why it considered that a similar density of development would not be acceptable on the appeal site, with specific reference to its relationship to other nearby housing, the appearance of the site and its wider context, including the open land to the south, and the contribution of its existing character to the street scene.
7. It will be seen from my decision that I have reached a different conclusion on those matters. However, the LPA has clearly and adequately substantiated its first reason for refusal with specific reference to identified aspects of the area's character and appearance. The LPA was not unreasonable in its views or in coming to the conclusions that it did, it simply gave the issues different weight than I did.

Reason for Refusal 2

8. With reference to its second reason for refusal, the LPA's statement refers to concerns regarding previous consents for works to reduce or remove protected trees. It appears that such matters were not raised with the appellant before the application was reported to the Panel. However, those previous consents were set out in the planning history section of the report to the Panel and it is evident that they were discussed at the Panel meeting and formed part of its reason for refusing the application. Therefore, the reference to those previous consents in the LPA's statement does not amount to the introduction of a new issue, since it clearly formed part of the LPA's rationale for refusing the application.
9. Those previous applications were not made by the current appellant. However, a site's planning history is a material planning consideration, and it was not unreasonable for the LPA to have regard to or afford weight to those previous consents in reaching its decision.
10. During the appeal, I have sought and received further information and clarification from the main parties regarding those previous consents, including what works were subsequently carried out pursuant to them, and the status of the existing trees on the site.
11. From that further information, it has become apparent that only one tree was actually removed from the site under those earlier consents, as well as works having been carried out to other trees. However, it is evident from the submissions that, on the basis of the information before it when it made its decision, the LPA was not certain whether those previously consented tree works or removals had been carried out insofar as they related to the appeal site, whether replacement trees had subsequently been planted and, if so, whether such replacements were now proposed for removal. It was therefore not unreasonable to take into account the possibility that the removals now proposed may have been additional to those previously consented works. This was not clear from the information which was provided by the appellant at application stage and which was before the LPA at the time the application was determined.

12. In any event, the current application proposes the removal of 9 trees. It is clear from the LPA's submissions that it considered trees to be an important component of the site's existing character and appearance. In that context, whilst the LPA's landscape advisor may not have objected to the proposal, it was not unreasonable for the LPA to come to the conclusion that the removal of those 9 trees would cause harm to amenity as a matter of planning judgement.
13. The LPA also identified concerns that the trees could overshadow rooms within the development, leading to pressure for protected trees to be significantly pruned or reduced in the future. Policy TD 3 of the Council's Supplementary Planning Document: Trees and Development (the Trees SPD) advises that 'development will not be permitted where a principal habitable window would be overshadowed by a tree or where any part of a tree would be sited within 3.6m of a principal habitable room window'. Based on that wording and the supporting text to the policy, it is clear that the 3.6m recommended distance is not the sole criterion. The policy makes allowance for a judgement to be made as to whether a principal habitable room would be overshadowed by a tree.
14. During the course of the appeal, I have requested and received further information and clarification regarding the position of the trees on the site and the distances between trees and principal habitable room windows. On the basis of that information, I have concluded that the trees would not give rise to unacceptable overshadowing in the future.
15. However, having regard to the wording of Policy TD 3 and on the basis of the information that was available to it at the time of the application, the LPA was not unreasonable in exercising its planning judgement and coming to a different conclusion in that regard. It has clearly articulated its concerns with specific reference to the proximity of the proposed properties to protected trees and adequately substantiated its reasons for concluding as it did in that regard.
16. Drawing those threads together, the LPA has substantiated its second reason for refusal with reference to the removal of protected trees and the potential for future overshadowing and pressure for future works or removals. Whilst I have come to a different conclusion on those matters, the Council has not behaved unreasonably in coming to the conclusions that it did, as a matter of planning judgement and based on the information that was before it when it made its decision.

Conclusion

17. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case.

Jillian Rann

INSPECTOR