



Costs Decision

Site visit made on 7 April 2021

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 26 April 2021

Costs application in relation to Appeal Ref: APP/W5780/W/20/3258758 Land adjacent to 28-39 Malcolm Way, Wanstead, London E11 1PW

- 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 Spring Valley Limited for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of planning permission for *"two x three storey (3 x bedroom) dwelling houses with associated car parking and amenity space"*.
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Decision

1. The costs application is refused.

Reasons

2. The Planning Practice Guidance advises that costs may only 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.
3. In their refusal reason, the Council wrongly stated that the trees on the site's southern boundary were subject to Tree Preservation Orders (TPOs). This appears to have been based on erroneous advice contained in the Planning Officer's report. Later, in response to a query raised by the appellants' agent, it was accepted that the trees in question were in fact not protected. I note the Council's explanation of how this error may have occurred. But such an error is a serious matter, which could have led to very significant consequences, going well beyond the present appeal. I therefore consider that the Council's error, in wrongly alleging that the trees in question were legally protected, amounted to unreasonable behaviour.
4. However, the basis of the refusal reason was not only that the Council thought the lime trees to be subject to TPOs, but also that they were considered to make a significant contribution to the character of the area. This judgement was further explained in the officer's report, in that they were considered to contribute to the site's landscape setting, and formed part of a green buffer between Malcolm Way and other development. To my mind, it is clear from this that the judgement that was made was a qualitative one, based on the perceived merits of the trees themselves, and their role in the townscape, and not simply on whether they were also protected.
5. Had the Council not fallen into error over the alleged TPOs, it is possible that this might have led them to a different conclusion as to whether refusal was

justified. But equally they could have taken the view that the impact on the trees was sufficient justification, irrespective of whether they were protected. Policy LP38 would still have been relevant in any event, and there would have been no reason for the Council to take a different view as to the conflict that they found with that policy. The Council's appeal statement suggests that, even if they had avoided the error with regard to the TPOs, their decision on the application would have been the same. That being so, it follows that the Council's unreasonable behaviour in relation to the error on the TPOs did not cause the appellants to incur any unnecessary or wasted expense, as the appeal would still have been needed in any event.

6. In my decision on the appeal, I have come to a different conclusion from the Council as to the trees' value and their importance to the area. But these are matters of judgement, and in this respect it was not unreasonable for the Council to take the view that they did. Nor was it unreasonable in that case, for the Council to consider that their objection to the potential loss of the trees could not be overcome by conditions. The Council's decision to refuse permission was therefore not unreasonable, and neither was the decision to continue to contest the appeal, even after the error on the TPO had been discovered and admitted.
7. I note all the other matters raised by the appellants. The discussions between the parties, during the course of the application and appeal, have evidently been rather fraught, particularly with regard to the Council's requests for further information. However, given the Council's opinion of the trees, it was not unreasonable to seek such information. The timescale evidently became somewhat protracted, but the applicants could have shortened this by appealing against non-determination; there is no evidence that delays on the Council's part caused any additional costs to be incurred in the appeal process. There is no evidence that the error over the TPOs was anything other than a genuine mistake. Nor is there any clear evidence that the original Tree Officer failed to visit the site. The fact that an officer's identity or qualifications have not been disclosed might sometimes affect the weight that can be given to their evidence, but the failure to provide these details is not in itself unreasonable. It is not clear in what context it was suggested that a further pre-application process should be embarked on, with the requisite fee, and on the evidence provided, I can draw no conclusion as to whether this was reasonable or not.
8. The Housing Delivery Test (HDT) results for 2020 were published by Government in January 2021, at around the same time as the Council submitted its appeal statement. Whether or not the Council had actually received the HDT figures at that point in time, it would not have had time to reconsider its position on the appeal. The failure to mention the January 2021 figures at that time was therefore not unreasonable. With regards to the previous year's figures, published in January 2020, if the appellants are right, that there was already a shortfall in that year too, then clearly this would have been an important material consideration, which should have been taken into account by the Council when they made their decision on the application. There is nothing in the Officer's report to suggest that they did so, and on the face of it, that may have been unreasonable. But on this point, the appellants' submissions are disputed by the Council. In any event, the evidence on this, from both sides, is limited and inconclusive. Based on the information before me, unreasonable behaviour has not been demonstrated in this case.

Conclusion

9. Although the Council's error with regard to the trees' TPO status was unreasonable behaviour, it is unlikely that this caused the appellants to incur any additional costs in the appeal process, over and above those that would have been necessary anyway. No other unreasonableness has been substantiated. A costs award is therefore not justified.

J Felgate

INSPECTOR