
Costs Decision

Site visit made on 27 July 2021

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Refs: Appeal A - APP/B3030/W/20/3255991 & Appeal B - APP/B3030/W/20/3255992

4 Yew Tree Way, Coddington, Newark NG24 2RZ

- 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 and Mrs Hazzledine for a full award of costs against Newark and Sherwood District Council.
 - The appeals were against the refusal of the Council to grant planning permission for a single detached dwelling and garage (Appeal A) and 2 no dwellings (Appeal B).
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Decision

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

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 051² of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
3. The applicant argues that the Council ignored officer advice and also refused the applications on the basis of inaccurate statements and allegations made by Members at committee. The argument is also advanced that the Council's actions have led to the necessity of submitting two appeals, and that the Council's appeal statement does not recognise that members were allegedly misled.
4. With regard to the Council's appeal statement, this was written after the applicant lodged the appeals. As such the content of the Council's appeal statement cannot have led to unnecessary costs at appeal. I give this argument limited weight.
5. The committee transcript sets out that there was a unanimous view that Appeal B should be refused permission. With regard to Appeal A, some members considered that a single dwelling would represent an appropriate compromise between woodland protection and development on this site. However, other Members took a very strong line that the evidence showed that the woodland

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

- has been eroded over time and that that encroachment would be likely to continue. It was argued that the imposition of conditions would not necessarily prevent that encroachment, whether intentional or not.
6. It is apparent from a comparison of the applicants' habitat surveys that there has been significant encroachment of amenity grassland into the woodland and a general degradation of habitat, particularly to the site frontage. As such, comments made by Members regarding the ongoing encroachment do not appear to me to be unreasonable. Furthermore, scrub and brush can be an integral part of a woodland ecosystem and its removal can lead to woodland establishment. The removal of scrub and brush is not necessarily good woodland management as argued by the applicant.
 7. There were also comments about the previous removal of trees which did not give the full circumstances. Nonetheless, protected trees were removed from the appeal site. Consequently, this statement is not untrue. Moreover, the officer's report sets out the site's planning history and the Council's liability for the failure to recognise that the site was covered by TPO N34 when the trees were felled.
 8. One Member made a statement that the yew wood is unique in the country. This is a statement for which there is no evidence. However, it is very difficult to know how the comments regarding the yew wood and the past removal of trees influenced other Members. My overall conclusion from the transcript is that there was a general concern that the future health of the woodland would be compromised, and that there would be ongoing attempts to formalise the woodland areas. Although the business manager set out that the garden and woodland could be separated by a picket fence, this was not seen as sufficient mitigation. Even if I concluded that the statements were misleading, on the basis of what is before me it is difficult to conclude with certainty that this led directly to the applications being refused permission.
 9. Moreover, Members are entitled to take a different view from officers and consultees. Although the applicant argues that *accepted method-based calculations* and *evidenced data* relating to the shading of amenity space was agreed with the planning officer, this has not been included in the evidence before me. The only evidence before me in this regard is the percentage or area of unshaded amenity space and as I have set out in my decision, it appears that these figures do not take account of overshadowing from the dwelling(s) and the trees.
 10. I see no reason why it was necessary to submit two appeals as the Council's concerns and reasons for refusal are common to both.

Conclusion

11. Whilst it is the case that misleading statements were made at committee, which would amount to unreasonable behaviour, I am unable to conclude that this led directly to the refusal of these applications. As such, unreasonable behaviour leading to unnecessary costs at appeal has not been demonstrated. The application for an award of costs is refused.

A Edgington

INSPECTOR