



Costs Decision

Site visit made on 17 August 2021

by F Wilkinson BSc (Hons), MRTPI

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

Decision date: 14 September 2021

Costs application in relation to Appeal Ref: APP/E2734/W/21/3275123 Birthwaite House, Birthwaite Lane, Ripley HG3 3JQ

- 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 M Hilton for a partial award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of planning permission for a new four-bed detached house.
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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 who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicants claim that the Council has acted unreasonably by:
 - considering the planning application as being identical to the two previous proposals when the proposed design, aesthetics and siting are different; and
 - not engaging with the applicants during the application process to inform them of its design concerns, which could have been overcome before the decision was made.
4. The PPG gives examples of unreasonable behaviour by local planning authorities. Examples include the withdrawal of any reason for refusal and refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
5. The Council disputes that it has acted in an unreasonable manner. It states that it has acknowledged that there are differences with the previous applications, but the appeal proposal does not address its principal objection to the scheme relating to its location outside of any development limits, which was also highlighted in the previous Inspector's decisions. The Council states that the applicants did not pursue the Council's pre application advice service

- and that minor alterations would not have addressed its concerns, including the point of principle about the proposed location.
6. I am satisfied that the Council's officer report does consider the differences between the proposed development and the previous two schemes in terms of its siting and design. It also identifies that its conformity with the Council's development strategy has not altered from the position taken on the previous appeals. Furthermore, the assessment presented in the officer report indicates that it would have been difficult to overcome the concerns about design, landscape impact and effect on trees without quite substantial changes to the proposed development. Such changes would likely have been difficult to accommodate within the scope of the planning application.
 7. The applicants state that a consequence of not informing them of the design concerns was a reason for refusal relating to damage to the root protection area (RPA) of a mature tree and future pressure to fell other trees covered by the Tree Preservation Order as they grow. The applicants state that this incurred costs for them in preparing additional information for the appeal that could reasonably have been presented prior to determining the planning application.
 8. I note that the former concern was subsequently withdrawn by the Council. However, based on the information submitted with the planning application, the Council had reasonable concerns about the impact of the proposed development on the RPA of the mature tree and the potential for future pressure to fell other trees which justified its decision. The applicants submitted further survey information on the tree roots and on the shading potential of the trees at a greater height with their appeal statement which was not available to the Council when it made its decision.
 9. I understand the applicants' frustrations about the Council not requesting this additional information during the determination of the planning application. If the Council had done so it would have likely narrowed the reason for refusal relating to the effect on the RPA of the mature tree, although the Council retained its concern about the future pressure to fell the trees as they mature. Notwithstanding this, the applicants would have had to address those concerns in any event and would have had to incur costs in preparing this additional information even if it had been requested during the determination of the planning application.
 10. The applicants make reference to the anticipated changes to the National Planning Policy Framework (the Framework), in particular changes to paragraph 172, and state that the Council should have given proper consideration to this. Paragraph 172, now paragraph 176 of the 2021 Framework, relates to National Parks and Areas of Outstanding Natural Beauty. The appeal site does not lie in one of these designations. This paragraph is not therefore relevant.
 11. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

F Wilkinson

INSPECTOR