



Costs Decision

Site visit made on 15 December 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Costs application in relation to Appeal Ref: APP/X0360/D/21/3279457 Wilderness Cottage, Hatch Gate Lane, Cockpole Green, Wargrave RG10 8QJ

- 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 & Mrs L. Jones for a partial award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of planning permission for the proposed erection of a garden storage outbuilding and retaining wall, following demolition of existing outbuildings.
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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 applicants have made an application for a partial award of costs on the basis that the Council has behaved unreasonably in not determining similar cases in a consistent manner and acting contrary to or not following well-established case law. The PPG refers to these as examples of unreasonable behaviours under paragraph 48. In addition, the applicants consider it was unreasonable that the Council's Landscape and Tree officer did not undertake a site visit to inform the assessment of the development proposal.
4. It is the applicants view that they have incurred additional costs in the appeal process in needing to address two additional reasons for refusal, one in relation to landscape character and the other in relation to the effect on protected trees.
5. The appeal scheme is a revision to a similar scheme for an outbuilding for which planning permission was refused¹. The first scheme was refused on one ground, that is that it was inappropriate development in the Green Belt and no very special circumstances existed to outweigh the harm to the Green Belt. In order to address this, the applicants sought to reduce the volume of the proposed outbuilding and altered the shape and volume of the roof from a dual

¹ Council Ref: 202058

pitched roof to a shallow mono-pitched roof. This was the only difference between the original scheme and the scheme that is subject to this appeal.

6. The first application did not include a reason for refusal based on the Bowsey Hill Valued Landscape. The Council's Landscape and Tree officer in respect of the first application recommended approval subject to conditions to provide landscaping proposals. In response to the amended scheme, which was for a less prominent building due to its altered roof form, the Council's Landscape and Tree officer, albeit a different officer, concluded that the proposals would introduce alien, urban elements of inferior design, poor quality build and materials, and insensitive layout and location.
7. In view of the limited alterations to the design of the building and the initial findings of the Council in respect of the first scheme, this change in position by the Council in respect of landscape harm demonstrates inconsistency and unreasonable behaviour by the Council.
8. The Council also refused the scheme on the basis of its relationship with the existing protected trees on the site and harm to these, the woodland and its role as green infrastructure. Whilst this was a new reason for refusal, it is evident that between planning permission having been refused on the original scheme in October 2020 and the Landscape and Tree officer's consideration of the revised scheme in March 2021, some ground movement within the sloping bank had occurred behind the retaining wall. This is shown in the photographic evidence from 26 February 2021.
9. Whilst the retaining walls formed part of the original application, I consider that on the basis of the altered circumstances on the ground, the Council was entitled to come to a different conclusion with regards to the effect of the proposed development on the protected trees. I do not therefore find the inclusion of this reason for refusal to be unreasonable.
10. It will be seen from my decision that I agree that there has been some harm to the protected trees. This harm is also acknowledged in the various tree reports submitted by the applicants. It follows therefore that I do not consider the Council has behaved unreasonably in coming to this conclusion.
11. Case law² has established that a previous decision is a material consideration on the basis that like cases should be decided in a like manner so that there is consistency. In view of the short timescales between the original application and the application that is the subject of this appeal, it would be reasonable to expect consistency.
12. I have found that the Council has diverged from its original decision. With regards to landscape impact I find this unreasonable. However, due to the observed changes on the site arising from the development, I do not consider the Council has been unreasonable in introducing its third reason for refusal in relation to the effect of the proposed development on the protected trees.
13. The Council's Landscape and Tree officer did not undertake a site visit in respect of the revised scheme, relying instead on photographic evidence and reporting back by the Case officer. The application was being dealt with during a global pandemic where many normal working arrangements were not possible due to lockdowns and isolation restrictions being in force. Whilst I

² North Wiltshire DC v SSE (1993) 65 P&CR 137

appreciate that a site visit by the Landscape and Tree officer may have been helpful, in these circumstances the Council has stated that it was not possible. This is unfortunate but not in itself unreasonable. It is clear that the Landscape and Tree officer had evidence before him when assessing the application. Furthermore, a site visit was conducted by the Council's Case officer. I do not therefore consider that this demonstrates unreasonable behaviour by the Council.

14. I am satisfied that the Council acted reasonably in its assessment as to why the scheme would not be acceptable in respect of the protected trees and that it had adequate information before it to make that decision. However, I have found that the introduction of its second reason for refusal for a reduced scheme is inconsistent with its decision on the original scheme. Consequently, I find that the applicant has incurred unnecessary or wasted expense in the appeal process in rebutting this second reason for refusal.
15. Whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position, extra costs were incurred in preparing evidence to defend those aspects of the appeal and an award in these specific respects is appropriate.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. 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 Wokingham Borough Council shall pay to Mr & Mrs L. Jones, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second reason for refusal.
18. The applicant is now invited to submit to Wokingham Borough Council, 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