
Costs Decision

Site visit made on 24 March 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Costs application in relation to Appeal Ref: APP/G2625/W/21/3274824 Norwich School Refectory and adjacent Palace Lawn, The Close, Norwich, Norfolk NR1 4DD

- 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 Norwich School for a full award of costs against Norwich City Council.
 - The appeal was against the refusal of planning permission for a proposal described as the demolition of the existing school dining hall, ad hoc structures, sheds and trees. Redevelopment of site for new dining and teaching facilities, with the provision of a new pedestrian and service access, landscaping, the relocation of an electricity substation and the provision of associated infrastructure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made 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 applicant alleges that the Council failed to engage in the appeal, but this is not accurate. The Council has provided all necessary documents within the prescribed timeframes including a considered statement of case. It has therefore engaged in the appeal and there has been no procedural failing in this respect.
4. The Council's appeal statement presents its case with no direct reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 and with limited reference to the policies of the development plan. There is also very limited reference to the National Planning Policy Framework (the 'Framework'). However, the Council's appeal statement is to be read alongside the decision notice and other submissions. The reason for refusal in the decision notice is clear and concise and grounded in relevant planning policy. The concerns regarding the impact on visual amenity and heritage link appropriately with the requirements of the policies referred to. The decision notice does not include a balance pursuant to s38(6), but the Council's decision makers would have had the committee report before them. This document set out the material considerations to balance against the policy conflict. The Council's application of s38(6) is therefore implicit when its submissions are read as a whole.

5. Moreover, it is also implicit that the author of the Council's statement had the heritage section of the Framework in mind when referring to matters such as 'public benefits' and undertaking a heritage balance pursuant to Paragraph 202. As a result, it is possible to deduce how the Council assessed the proposal against s38(6), material considerations, the development plan and Framework from a fair reading of its submissions.
6. The Council did not commission its own Townscape and Visual Impact Assessment (TVIA) but that is not unusual. Instead, the Council's assessment was informed by its own Landscape Architect, who raised some concerns regarding the 'unmitigable' effects of the proposal on the public realm.
7. The Council did not share the conclusions in the TVIA, but many of the findings therein are grounded in professional judgement. Judgement is not fact and therefore the Council were entitled to reach a different view. In so doing, the Council explains at Paragraphs 3.10-3.13 of its statement what it considers the visual impacts to be with reference to the most relevant vantage points. The applicant does not agree with the conclusions reached, but the Council was not vague or generalised in its approach. It is quite clear what the alleged harm would be and why.
8. The parties disagree on whether the existing trees have been *in situ* for hundreds of years (i.e. more than one hundred) or whether the proposed dining hall would be marginally visible from street level. However, these are minor points. Even if the Council is wrong, it would not undermine its case in any meaningful way. This is because the presence of the proposed building's was not the Council's main concern, it was instead the loss of the trees. Moreover, it is clear to everyone that the trees, especially the London Plane tree, have been in place for a notable period. The trees are also on land that has been undeveloped since at least 1830 (as evidenced by maps).
9. It is fair to say there is no specific reference on page 69 of the Conservation Area Appraisal (CAA) to the trees within the appeal site. However, the Council were attempting to make a wider point in its submissions. This being that the trees in the appeal site contribute to the verdant character of the Cathedral Close and add to area's townscape quality. This is a reasonable interpretation of the CAA when read as a whole. In any event, the CAA cannot list every positive aspect of a CA in detail. What is not in doubt is that the trees in the appeal site are identified as 'important' in the CAA and the Council has explained in its submissions why it considers them to be so. This point was not unsubstantiated.
10. Moreover, the Council were entitled, as a matter of judgment, to conclude that the trees are a pleasant component of views towards a positive view of the Cathedral (identified in the CAA) and therefore removing them would not enhance views of that building. In reaching this conclusion, the Council were able to refer to evidence in the form of visualisations supplied by the applicant.
11. I appreciate that the author of the Council's appeal statement was apparently the author of the committee report and is setting out differing views in the two documents. However, she is making the case for the Council in the latter. Although an awkward position for a planning officer to be in, this is not an unusual set of circumstances and does not amount to unreasonable behaviour. In any event, the points in the Council's appeal statement have apparently been informed by more than one officer.

12. Turning to heritage, the Council has adequately articulated why the trees proposed for felling are important to the significance of the CA. It was entitled to interpret the paintings referred to in the way it did – as evidence of the verdant nature of the Cathedral Close. Moreover, Historic England were concerned by the heritage impacts of removing the trees. The Council's judgement was therefore informed by objective specialist advice. The Members of the Council's planning committee would have approached their deliberations with this professional advice in their minds. The recommendation to approve was also 'finely balanced', which is understandable given the sensitivity of the site. Given these circumstances, this is not an instance where the proposal should clearly have been approved and therefore Members of the committee were entitled to reach a different overall conclusion when applying their own judgment.
13. After coming to the view that the trees are a positive feature of the CA and add to its significance (a reasonable finding given that they are identified as being 'important' in the CAA) there was no flaw in the Council's finding that Policy DM9 supports the trees' protection. This is because Policy DM9 seeks to preserve or enhance the significance of conservation areas. Removing important trees would not do this for the reasons given by the Council and set out in my decision.
14. The Council has explained that its reference to 'dense and unrelenting urban form' relates to the approach to the Cathedral and not the building. I consider this to be plausible as it is hard to envisage a Council describing a Grade I listed building in that way. The underlying point is that the presence of the trees in the appeal site softens the built form in a positive vista identified in the CAA. I share the view of the Council that the applicant has misconstrued this point.
15. The Council removed its objection in respect of biodiversity as it was unable to substantiate this concern with evidence. However, there was evidence before the Council at the time it made its decision that there would be a net gain in biodiversity. The committee report also makes the point that there would be a 10% net gain and the Natural Areas Officer had removed their objection. There was no substantive evidence before the Council justifying a contrary conclusion. Moreover, the Council failed to appreciate that the enhancement of biodiversity was a public benefit to be factored into the balance.
16. Although the progress of the Environment Bill is a material consideration, it has not fundamentally changed matters. Policy at the time of the committee meeting stated that decisions should provide a net gain for biodiversity. There was no requirement for this to be on site. In any event, when reading the reason for refusal¹ and the statement of Cllr Bogelein it is fair to say that the Council did not seem to appreciate that there would be an overall net gain to biodiversity achieved through off site planting.
17. If the Council's concern related specifically to the loss of biodiversity from the city centre, then this would need to have been substantiated with evidence demonstrating the alleged harm. Such evidence was not submitted. In fact, the evidence before me suggests that the trees on site are of limited value to biodiversity. As a result, this aspect of the reason for refusal was unreasonable and amounted to a substantive failing. The appellant has been put to

¹ Which alleges significant impacts on biodiversity.

unnecessary and wasted expense in addressing this point in detail in their appeal submissions.

Conclusion

18. Considering the above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. But only in relation to the ecology/biodiversity element of the reason for refusal. As a result, a partial award of costs is justified.

Costs Order

19. 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 Norwich City Council shall pay to Norwich School the costs of the appeal proceedings described in the heading of this decision, but only insofar as they relate to matters of addressing the biodiversity aspect of the reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Norwich City 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.

Graham Chamberlain,
INSPECTOR