

Costs Decision

Site visit made on 26 July 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Costs application in relation to Appeal Ref: APP/F3545/D/21/3289735 80 Nowton Road, Bury St Edmunds IP33 2NN

- 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 Michael Falcone for an award of costs against West Suffolk Council.
 - The appeal was made against the refusal of planning permission for a new vehicular access to the property from the highway.
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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 where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's basis for claiming full costs relates to the Council's alleged inaccurate assertions about the proposal's impact on the character of the surrounding area; applying a provisional Tree Preservations Order (TPO) to three trees in reaction to the proposal; the Council's approach to incursions within the root protection area (RPA) of the trees; and, as a result, preventing development which should clearly be permitted.
 4. As a general principle, considerations relating to the effects of development on local character and appearance involve matters of judgement. Based on the appeal submissions, and acknowledging that matters of judgement are involved here, I consider that the Council's assessment is proportionate and reasonable, including reference to relevant development plan policies, to support its judgement of the consequences of the proposed development in this location.
 5. With regard to the TPO, the Council has statutory powers available to it to make such Orders and there is no evidence to suggest that the approach in this case was unreasonable simply because the timing of the TPO coincided with the proposed development. Moreover, it is not possible to infer that had the TPO not been made then the effect on the nearest tree would not have been a reason for refusal, resulting in the likely need for the applicant to seek
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professional advice.

6. Turning to the effect on the tree's RPA, it is not unreasonable for the Council's professional Arboricultural Officer critically to appraise the assessment undertaken on the applicant's behalf. In my view, it is not the case that the Council's Officer simply asserted a zero-tolerance approach to incursions within the RPA. In their review of the submitted Arboricultural Impact Assessment the Officer referred to the likely harm from the proposed excavations due to the area in question containing a high volume of roots 'given the surrounding subterranean constraints'. This is a site-specific, professional judgement about the likely effects of development, which the Council relied upon in reaching its decision in the particular circumstances of this case. As such, I give limited weight to the previous decisions on an application and appeal referred to by the applicant. These and the appeal proposal in this case are individual development proposals which properly should be considered on their individual merits, taking account of site-specific matters.
7. Therefore, taking these findings as a whole, there is no basis for me to conclude that the Council's approach with regard to this proposal amounted to unreasonable behaviour on its part.
8. Accordingly, having considered this costs application on its merits, for the reasons given I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

J Bell-Williamson

INSPECTOR