

Costs Decision

Site visit made on 2 September 2022

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Costs application in relation to Appeal Ref: APP/J1915/D/22/3299433 4 The Orchard, Tonwell SG12 0HR

- 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 Chonnor Dowd for a full award of costs against East Hertfordshire District Council.
 - The appeal was made against the refusal of planning permission for the erection of a single storey detached double garage.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Guidance states that costs that are unrelated to the appeal are ineligible.
 3. That the Council should have determined the application quicker and responded sooner with its concerns about the submitted Arboricultural Method Statement (AMS) is in little doubt. The decision notice, which is dated 1 March 2022, is more than 11 weeks after the application was received. The consultation response from the Council's Landscape Officer, dated 3 February 2022, raising an objection to the scheme in the light of the AMS was sent at the end of the 8-week determination period. The applicant's frustration with this delay is understandable.
 4. However, the AMS, which supported the proposal, is dated 15 April 2021. It was therefore available well in advance of the application submission made in December 2021. The Officer's report cross refers to the consultation response from the Council's Landscape Officer, which assessed the AMS. The Council, therefore, had regard to the AMS in their consideration of the proposal. The application was then refused planning permission because the Council reached a different judgement on the evidence presented in the AMS. The document itself was not ignored nor is there any convincing evidence that the Council withheld planning permission regardless of the findings in the AMS.
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5. The AMS appears to have been prepared at short notice to support an earlier application for a different scheme, which also included an extension and alterations to the house. The AMS was prepared quickly, and I have no reason to doubt that the applicant incurred extra expense as a result. However, these costs were incurred in relation to the previous application and were not part of the appeal process associated with the proposal before me. Having gone to the considerable expense of commissioning the AMS the applicant is also critical of the Council's failure to then take the document into account. However, this criticism similarly relates to the earlier application and not this appeal scheme.
6. It is not uncommon for new development and associated operations to take place close to protected trees, as the applicant points out. However, to carry out work within the root protection area of these trees requires justification and a technical solution agreed beforehand to prevent damage to the tree(s). The onus is on the developer to provide that information and reassurance.
7. There is an existing garage just beyond the front garden of No 4, which is also close to the protected oak tree and falls within its RPA. However, the presence of this existing structure does not justify the proposal for the reasons given in my decision. Finally, there is no evidence that the Council's Landscape Officer was not appropriately qualified to comment on the application.

Conclusion

8. Overall, for the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Gary Deane

INSPECTOR