



Costs Decision

Site visit made on 6 June 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2022

Costs application in relation to Appeal Ref: APP/E2734/W/22/3294188 The Mews House, 74A Duchy Road, Harrogate HG1 2EZ

- 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 Henderson for a partial award of costs against Harrogate Borough Council.
- The appeal was against the refusal of planning permission for the erection of 1no. dwelling; associated external works and landscaping (revised Description).

Decision

1. The application for an award of costs is allowed in part as set out below.

Reasons

2. Planning Practice Guidance (the Guidance) 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 or wasted expense in the appeal process. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. The Guidance is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a local planning authority's handling of the planning application prior to the appeal may lead to an award of costs, providing a range of examples. Thus, the refusal of planning permission on a planning ground capable of being dealt with by conditions, if it is concluded that suitable conditions would enable the proposed development to go ahead, is an example of behaviour which can be capable of leading to a substantive award of costs against a local planning authority.
4. The agreement of landscaping proposals is typically capable of being dealt with by way of suitably worded planning conditions. Whilst the Council may not approve of the species mix of planting previously undertaken by the appellant, constructive discussions around this particular matter in the context of the appeal proposal could have ensured an iterative approach to such a scheme.
5. As I have set out in my decision regarding the planning merits of the proposal, I am satisfied that this matter may be dealt with by way of planning condition. Whilst the Council's concerns regarding the planting and species mix are noted, and the reasoning behind it set out in the Council's Statement of Case, that does not and should not have prevented such matters being dealt with by way of a suitably worded condition, together with the discussions that would typically and reasonably flow from that.

6. It appears that a number of trees shown for retention on plans submitted in respect of the extant 2018 scheme and the current scheme have already been removed from the site, albeit the exact circumstances in which they were removed remains disputed. Nevertheless, the proposal now before me differs from those previously considered by the Council¹ and at appeal² and is therefore likely to raise different issues, however subtle they may be, to those that have gone before.
7. Whilst I disagree with the Council regarding the effect of the proposed development on those trees shown to be retained within the scheme, I do not consider that they acted unreasonably in reaching the conclusion that they did. The retention of T2 within the scheme represented a significant change from the previous appeal scheme² and thus the proposed building being sited closer to it than would previously have been the case and allows the Council to consider it afresh. Nevertheless, for the reasons I have set out in my decision on the planning merits, I am satisfied that a replacement planting and landscaping plan secured by suitably worded conditions would provide an acceptable landscaping scheme to replace those trees lost (at whatever stage in the process) and to bolster and supplement those to be retained.
8. Whilst I find no unreasonable behaviour in respect of the first part of the second refusal reason, this does not negate the Council's unreasonable approach to the matter of the landscaping and replacement planting proposals. Had the latter been approached more reasonably, it may not have negated the second reason for refusal in its entirety, but it has resulted in the appellant incurring additional and unnecessary expense. In this sense, the application for an award of costs succeeds in part.

Costs Order

9. 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 the Harrogate Borough Council shall pay to Mr & Mrs Henderson the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the preparation of a case at appeal for matters relating to replacement planting and planting species mix; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Harrogate Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching Costs Decision agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G Robbie

INSPECTOR

¹ LPA Ref No: 18/00658/FUL

² LPA Ref No: 20/00433/FUL – Appeal Ref: APP/E2734/W/20/3254956