



Costs Decision

Site visit made on 3 May 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2023

Costs application in relation to Appeal Ref: APP/V4250/W/22/3311008 Land to rear of 17-23 Walkden Avenue, Wigan WN1 2JJ

- 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 Mrs Steff Millar for a full award of costs against Wigan Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for erection of 10 garages.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. The applicant claims that the Council has acted unreasonably when providing pre-application advice in respect of a previous proposal to build 15 garages on the appeal site. I refer to that previous proposal, and the outcome on it, in my decision on the current appeal. An application for an award of costs was made by the applicant in that previous case, and that application was refused. Having reviewed all the evidence and noting that previous reasons for refusal regarding coal mining risks are now resolved, the substance of the applicant's claim regarding unreasonable behaviour is essentially the same as that on which the previous application for costs was made.
4. I agree with the conclusions reached by the Inspector on the previous application for costs in respect of the advice provided by the Council regarding protected trees. It is not necessary for me to repeat in detail the explanations presented in that previous decision or repeat the conclusions.
5. The original pre-application advice dated 13 January 2021 indicated that the Council's Trees and Woodlands Officer does not have any issues in principle with the site being returned to its former use. However, the number of garages being proposed would be dependent on the condition and quality of protected trees located on the site and this has the potential to serve as a significant constraint. The Council were clearly concerned about the need to establish details regarding the condition of the trees on the site, including those covered by the Tree Preservation Order (the TPO). This is done in the Tree Survey Report (February 2021) (the TSR) provided by the applicant with their previous planning application submitted in June 2021. The TSR was also submitted with the application now the subject of the appeal before me.

6. The Council provided further pre-application advice (the second advice) dated 29 November 2021, after the previous planning application was refused. The applicant states that they never requested that advice and it was provided free of charge. Nevertheless, the second advice makes clear the Council's position that *'In principle there are no objections to the erection of garages on the site, however the Trees and Woodlands officer will not support the removal of any protected trees to facilitate the development.'* While this is more direct than the earlier advice, the Council will have had the benefit of the additional information from the TSR by that time. The TSR was identified by the Council as a prerequisite to the consideration of any proposal for development and it is reasonable that the Council should pay due regard to its conclusions. It seems to me that this is what the Council did.
7. The pre-application advice provided on both occasions does not indicate that no trees could be removed. There are clearly more trees and groups of trees on the site than those protected by the TPO, and this is evident from the TSR which reports on a survey of the condition of 23 trees or groups of trees. As I have noted in my decision, the TSR recommends, without further detailed comment, that only one protected tree is unsuitable for retention.
8. The applicant has also expressed concerns regarding a lack of communication from the Council, and specifically the Trees and Woodlands Officer, during the pre-application and application process. However, the Council provided pre-application advice on two occasions before the application the subject of the current appeal was submitted, and the advice is consistent. It is therefore not unreasonable for the Trees and Woodlands Officer to advise that the applicant should liaise with the Planning Officer in future correspondence.
9. The applicant indicates that the land would have been sold and no scheme for garages would have been proposed had the second advice been provided when they first sought pre-application advice, and that the actions of the Council in this respect has caused them unnecessary expense. However, notwithstanding the conclusions in the TSR, the applicant continued to an appeal with their original scheme for 15 garages and, being aware of the second advice, pursued a further planning application for 10 garages, now the subject of the current appeal, which included the removal of several protected trees. The applicant's concerns about the planning application fees are a matter to be resolved separately with the Council.
10. The applicant may be frustrated with the outcome of the planning applications and in their dealings with the Council, and I note they have pursued the matter separately through the Council's complaints procedure and through the Local Government & Social Care Ombudsman. However, the applicant's case relates to costs incurred during the planning process. The Council has provided generally consistent advice in respect of the protected trees, and the evidence provided to me does not demonstrate unreasonable behaviour by the Council.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David English

INSPECTOR