
Costs Decision

Site visit made on 18 July 2023

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Costs application in relation to Appeal Ref: APP/N1730/W/22/3313600 Land at Yateley Lakes, Reading Road, Yateley

- 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 Nikolai Fenyk for a full award of costs against Hart District Council.
 - The appeal was against the refusal of the grant of planning permission for the erection of a 1.99 metre high palisade fence around the lakes.
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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 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 is applying for a full award of costs. The applicant considers that the Council acted unreasonably by repeatedly failing to apply the correct legal tests for determining an application by failing to consider the fall-back position or tests.
4. In response, the Council states that it considered the fall-back position but gave it reduced weight in its consideration as it is subject to a different route that it considers results in a greater fragmentation and severance of the functionality of the green infrastructure. In addition, the Council considers that the proposal was submitted with insufficient information to conclude whether the proposal would protect the trees on the site that are subject to a blanket Tree Preservation Order.
5. In response to this, the applicant claims that the Council's rebuttal of the cost claim fundamentally alters the Council's argument as it is the first time that the Council have acknowledged the presence of a 'reasonable prospect' and have changed their assessment stating that the fallback position is fundamentally different.
6. The fallback position was mentioned in the Officer report that clarifies that it is a realistic fall-back position that is given weight. It is therefore clear to me that the fallback was noted and given weight, with the Council distinguishing it from the appeal proposal due to its slightly different position. It is evident from the

Council's decision and evidence that due to its different location they did not deem that the fall-back position outweighed the harm identified.

7. Although I have found in the applicant's favour in relation to the appeal, it was not unreasonable for the Council to reach a different view on this matter given the differing location of the fallback proposal and presence of the Tree Preservation Order. While I acknowledge that the Council could have more clearly stated in their appeal evidence that the harm identified was greater than that from the fallback position, and that the fallback has a reasonable prospect of being constructed, the Council's case is clear, supported by sufficient evidence and acknowledges the fallback consent as a material consideration distinguishing it from the appeal proposal due to its different location. As a result, I do not agree that the Council's position has changed because of their rebuttal of the costs claim.
8. The appeal provided an opportunity for the applicant to test the position and explain its case. In my view the Council provided reasons for its concerns which justified its position. It was not unreasonable for the Council to reach a different view and determine that the fallback position did not outweigh the harm identified, even if it did not state this as clearly as it could have. As a result, the Council did not act unreasonably, and did not act contrary to established case law.
9. In light of the above, I do not find that the Council acted unreasonably and made an informed assessment of the proposal adequately justifying their concerns.
10. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
11. The application for an award of costs must therefore fail.

C Rose

INSPECTOR