

Costs Decision

Site visit made on 5 December 2023

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2023

Costs application in relation to Appeal Ref: APP/A1015/D/23/3331580 4 Stanford Way, Walton, Chesterfield S42 7NH

- 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 Andrew Aldred for a full award of costs against Chesterfield Borough Council.
 - The appeal was made against the refusal of planning permission for the removal of existing leylandii hedge and replacement by brick panel wall.
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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.
 3. That the Council could have responded sooner with its concerns following the application submission is in little doubt. The applicant says that it was not until after the Council's decision had been issued that he became aware of the outcome, with no contact from the Case Officer in the interim. While the Council states that Mr Aldred apparently did not get in touch to check on progress, the need to do so may not have been foremost in his mind particularly if he was unfamiliar with the process. The brief exchange with the Council at the pre-application stage and the absence of an agent cited on the completed forms indicate that Mr Aldred may not have been professionally represented at that time. Given those circumstances, the applicant's disappointment with both the Council's decision and the lack of feedback beforehand is understandable.
 4. Even if there is no mandatory requirement to do so, it seems to me good practice to seek a dialogue with an applicant and to keep them updated not least for basic courtesy and to avoid unwanted surprises. That said, there was nothing procedurally incorrect in the Council's handling of the application. The decision was reached in a timely way with the reasoning clearly set out in the Officer's report. While the Council could have better communicated its position and intentions to the applicant in good time before the decision was made, its approach was not unreasonable.
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5. The Council's reason for refusal describes the area as spacious, open and 'free of hard boundary treatments', which does not explicitly acknowledge the presence of existing brick walls further along Stanford Way. However, these existing hard boundary features were noted in the Officer's report, which concludes at paragraph 10.1 that the area has few hard boundary treatments. Consequently, the Council's decision to refuse planning permission was not predicated on the belief that the area, however that is defined, was free of hard boundary features.
6. The Officer's report does not use the term 'fall back' nor does it refer to the retention of the existing boundary hedgerow in that way. It does, however, compare the visual impact of the proposal with the hedgerow and so its retention was in the author's mind when the report was written. That the Officer's report does not explicitly cover the wider benefits of introducing a new wall and fence, to which the appeal evidence refers, does not necessarily mean that these considerations were ignored. Given the amount of work involved, the Council cannot reasonably be expected to also address all other planning decisions involving similar proposals in the local area such as 2 Woodbridge Rise unless a particular case is expressly relied on at that time.
7. A more positive approach and a greater level of communication and 'solution finding' with the applicant may have ultimately led to a mutually acceptable scheme thus negating the need to pursue an appeal. A more proactive approach particularly at the pre-application stage to, for instance, offer up and explain the Council's objections could have shaped the applicant's approach to the proposed scheme. Even so, I am not convinced that the Council overtly closed its mind to discussion about the proposal or that a more favourable outcome for the applicant was a likely prospect given the fundamental difference of opinion between the main parties on the merits of the scheme.
8. For the reasons given in my decision, the Council's concerns were not unfounded nor were they unsupported by realistic, precise, and specific evidence about the consequences of the proposal. These concerns are clearly expressed in the reason for refusal with further detail set out in the Officer's report. To my mind, the Council has not prevented development that should clearly have been permitted nor has it failed to substantiate its case.

Conclusion

9. Overall, I conclude 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