
Costs Decision

Site visit made on 18 April 2024

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Costs application in relation to Appeal Ref: APP/F1040/W/23/3332913 Melbourne Community Centre, Church Street, Melbourne, Derbyshire DE73 8EJ

- 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 Melbourne Hall Estate for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing building and development of five new dwellings with associated amenity space and car parking.
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Decision

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

Reasons

2. 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 process¹.
3. There are two claims to assess. Firstly, whether the Council ignored the expert opinion of its own officers and prevented development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Secondly, whether the Council made an inaccurate assertion about the expected life span of the copper beech that would be felled if the proposed development went ahead.
4. In relation to the first claim, the officer recommendation in relation to the application was to grant permission. However, planning authorities are entitled not to accept an officer recommendation, so long as reasonable planning grounds are given for taking a different decision.
5. In its reasons for refusal the Council explained that the design of the proposed development was poor and that together with the removal of the copper beech stated this would result in harm to the character and appearance of the Melbourne Conservation Area contrary to the development plan. Within the Council's appeal statement the Council expanded upon its reasons for refusal. Although for the reasons given in the appeal decision I did not agree with the Council, such matters are a question of planning judgement. Through the wording of its reasons for refusal and its appeal statement the Council presented evidence that was sufficiently respectable to substantiate its decision to refuse permission. As a result, it did not act unreasonably.

¹ Paragraph: 028 Reference ID: 16-028-20140306, 'Appeals', 'Why do we have an award of costs?'

6. Turning to the second claim, in its appeal statement the Council stated that the copper beech had a life expectancy of over 40 years. This is the estimate given in the Arboricultural Impact Assessment submitted with the application. The view of the Council's tree officer in the committee report was that due to a structural defect it had a lower life expectancy of 20 years. Estimates of a tree's longevity are not definitive. Judgements made by different professionals may well differ. The Council in making its case supporting the decision of members to refuse the application against officer advice chose the figure most supportive of the committee's position. In doing so, it did not behave unreasonably.
7. Taking all these matters into account, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector