The Planning Inspectorate

Costs Decision

Hearing held on 2 February 2016
Site visit made on 2 February 2016

by W G Fabian BA Hons Dip Arch RIBA IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2016

Costs application in relation to Appeal Ref: APP/M2325/W/15/3133503 Land adjacent Edenfield, Clifton Drive, Lytham St Annes, Lancashire FY8 5RX

- 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 A Rigby for a partial award of costs against Fylde Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for dwelling with integral garage.

Decision

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

The submissions for Mr A Rigby

2. The application was made in writing with no further oral submissions.

3. Comments made in response to the Council's submissions at the hearing were that issues can always be characterised as a disagreement between the parties, but the question is whether it was reasonable for the Council to adopt the position that it did. It was not reasonable to refuse the application in the light of the information submitted with it. There was ample material at that stage to meet the objections expressed in the reason for refusal. The decision was not made in an eight week period; it took seventeen months to determine the application and issue a decision. During that time the applicant kept asking if any more information was required. There was no attempt by the Council to seek to resolve the issues during that period.

4. There was also no reference to the appellant's arboricultural submissions with the appeal in the Council's appeal statement. In particular, the reason refusal raises the matter of the landscape management condition attached to the Edenfield conversion condition, which was already addressed in the appeal decisions for the two houses at the other side of Edenfield, so that it is unreasonable for it to have been raised again.

The response by Fylde Borough Council

5. The response was also made in writing. The Council commented orally that its response is made in relation to the information provided at the application stage, not at the hearing. The hearing has essentially amounted to the parties'

respective tree experts debating the approach to tree protection, an issue that the Council needed to be satisfied could be addressed by condition. There was insufficient information at the application stage to enable this; new information has been provided at the hearing.

Reasons

6. The Planning Practice 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.

7. The applicant's claim for a partial award of costs, in respect of the Council's first reason for refusal, is in respect of substantive grounds as set out in the Guidance at paragraph 046. These grounds relate to the some of the examples of the type of behaviours that may give rise to a substantive award against a local planning Authority in paragraph 049 of the Guidance.

8. Firstly, in relation to preventing or delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; while I have differed from the Council's assessment and found the development acceptable, as set out in my main decision, this turned on further mainly oral information presented at the hearing, particularly at the site visit.

9. Also, on this ground, the Council took an extremely long time to determine the application and did not actively seek additional information in respect of its concerns as to the feasibility of carrying out the development without harm to trees, despite the appellant enquiring whether additional information was required. However, alternative courses of action in these regards were open to the applicant. An appeal could have been made against non-determination long before the Council reached its decision. Additionally it was open to the applicant at any stage, without awaiting a specific request, to proactively supply further more detailed information regarding the construction methods that would be employed in relation to both the main house, the driveway and the installation of underground services, with specific driveway construction details related to site levels in order to show how the trees on site would be safeguarded.

10. In this respect given the site circumstances and the TPO it should have been apparent to the applicant what the likely nature of the Council's concerns were. While generic construction details and a method statement were supplied with the application and may or may not have been available to the Council's tree officer at the time of his comments on the proposal, these details were not sufficient in themselves to be determinative in my decision, without further detailed explanation and the site visit. It was on this basis that the development was shown to my satisfaction to be acceptable with the imposition of conditions. In these circumstances the need for a hearing in relation to this part of the reason for refusal could not have been avoided.

11. I turn now to the suggested failure to produce evidence to substantiate each reason for refusal and the suggestion that the Council's evidence on this matter was vague, generalised or contained inaccurate assertions unsupported by any objective analysis. The Council took the advice of its own qualified tree officer who provided his professional assessment of the likelihood of damage to the trees, having regard to the duty to ensure that adequate provision is made for

the preservation of trees, under the Act referred to above. It was for the applicant to provide sufficient persuasive evidence that this would not arise.

12. A further ground for a substantive award of costs may be persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable. In this regard the Council's first reason for refusal refers to 'the trees on the site that are protected by Tree Preservation Order and by conditions attached to a separate planning permission'. It is clear from my colleague's previous linked appeal decisions, as set out in my main decision, that the Council had acknowledged that this woodland management condition had little prospect of being implemented or enforced. Reference to it in the reason for refusal is therefore unreasonable.

13. However, time spent in the hearing in this regard was minimal, and within the applicant's appeal submissions little evidence on this matter was submitted, other than to draw attention to the previous inspector's decisions. Thus, in real terms it is not apparent to me that the council's unreasonable behaviour on this single matter has given rise to any significant degree of wasted time or expense. The hearing could not have been avoided in relation to the other considerations raised.

14. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Wenda Fabian

Inspector