

Costs Decisions

Site visit made on 19 April 2016

by Jonathan Bore MRTPI

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

Decision date: 12 May 2016

Costs applications in relation to Appeal Ref: APP/W1850/W/16/3143328 Upper House Farm, Moreton-on-Lugg, Herefordshire, HR4 8AH

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr and Mrs S Perkins for full awards of costs against the County of Herefordshire District Council.
 - The appeal was in connection with the construction of 6 poultry houses and feed bins, ancillary works, erection of a biomass boiler building and single storey ancillary building, amendments to the existing vehicular access and associated landscaping.
 - Application A is for a full award of costs in regard to the preparation of evidence for the appeal.
 - Application B is for a full award of costs in respect of the failure of the local planning authority to attend the site visit scheduled on 30 March 2016, resulting in the site visit being aborted.
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Application A: Decision

1. The application for an award of costs is allowed in part, in the terms set out below.

Application B: Decision

2. The application for an award of costs is allowed in part, in the terms set out below.

Reasons

3. Irrespective of the outcome of the appeal, 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.

Application A

4. The Council's officers recommended the proposal for planning permission, but the committee decided to refuse it. Whilst members are entitled to come to decisions that are different from their officers' recommendations, the reasons for their decisions need to be properly justified.
 5. In this case there was no adequate justification to support the Council's refusal in respect of odour. When it came to the appeal, the Council did not put forward any technical evidence of its own to justify its refusal. Its approach appears to have been simply to try to discredit, without any proper technical foundation, the appellant's own odour report submitted as part of the
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Environmental Statement. The odour report was produced by a fully qualified and experienced consultancy and formed an important part of the Environmental Statement. It was not criticised by Environmental Health officers at the time that they were considering the planning application, or by the Environment Agency who have the responsibility of exercising control over the operation and issuing the relevant Environmental Permit.

6. The Council claimed to identify disparities between the findings of that study and those of a previous report for the existing units produced some years earlier by ADAS. However, the ADAS report was for a different, earlier development in a different position and was not related to the present scheme. If the Council had been genuinely interested in finding out the reasons for the differences between the two, it should have requested clarification and should not have proceeded to a refusal. At no point in the consideration of the application or subsequently at appeal did the Council offer its own adequate technical evidence as to why this earlier report should be preferred, or why it represented a more precautionary approach than the latest report.
7. Local opinion can be taken into account in planning decisions but it must be based on valid planning reasons supported by adequate evidence. In this case it is clear from the log of complaints kept by its own Environmental Health team that many of the sources of odour and noise that were complained about did not originate from the farm. It should have been plain to the Council that its own evidence did not support a refusal.
8. The Council's approach to the matter of odour was therefore unreasonable. It failed to seek an explanation regarding the differences between the odour reports, did not give appropriate credence to its own records on the issue of odour and failed to bring forward evidence to substantiate its case. It led the appellants to incur unnecessary expense in addressing this reason for refusal.
9. As far as landscape matters are concerned, the Council had before it the advice of its landscape officer but took a different view on the basis that the scheme would have a visual impact from certain elevated views. In this case the Council submitted adequate evidence to support its stance. I do not agree with the balance of its conclusions, but on this issue I do not consider that there was unreasonable behaviour leading to unnecessary expense.
10. A partial award of costs is therefore justified, limited to the cost of bringing evidence in relation to the refusal on grounds of odour, in respect of reason for refusal 1 (i).

Application B

11. The site inspection was originally due to take place at 10:30am on 30 March 2016. The visit had to be aborted because a representative from the Council failed to attend. Given the nature of the site, this was not an instance where it was possible to carry out the visit unaccompanied. The Council later apologised, confirming that it had received notice of the site inspection. The visit was re-arranged for 19 April 2016.
12. It makes no difference whether or not all the statements of case and third party representations had been received and read by all the parties by the time of the original site visit; the visit was arranged for 30 March and a Council representative should have been present. It also makes no difference that the

appellants live on the site; they run a business and were led to waste time which could have been spent on other business activities. The Council's failure to attend was unreasonable and led the appellants to incur unnecessary expense. An award of costs is justified, limited to the preparation and attendance of the visit on 30 March, though not the re-arranged visit on 19 April.

Costs Order

Application A

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the County of Herefordshire District Council shall pay to Mr and Mrs S Perkins the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing evidence in respect of Reason for Refusal 1(i), namely, the issue of odour.

Application B

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the County of Herefordshire District Council shall pay to Mr and Mrs S Perkins the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the aborted Inspector's site visit which was due to take place at 10:30am on 30 March 2016.
15. The applicant is now invited to submit to the County of Herefordshire District Council, to whom a copy of these decisions has been sent, details of the costs referred to in respect of Applications A and B above, with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jonathan Bore

Inspector