
Costs Decision

Site visit made on 1 February 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 3rd March 2017

Costs application in relation to Appeal Ref: APP/P2365/W/16/3161611 Tunley Brook Barn, Mossy Lea Road, Wrightington WN6 9RL

- 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 M. Myers for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for what was originally described as the "erection of agricultural building (resubmission of 2015/0397/FUL)".
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Decision

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

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 has suggested that the Council has acted unreasonably by refusing the application on grounds that should not have been at issue and introducing new policies and reasons for refusal at the appeal stage, which were not raised in the initial application.
 4. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and/or failure to produce evidence to substantiate each reason for refusal on appeal. There is also risk of an award if they introduce fresh and substantial evidence at a late stage, necessitating extra expense for preparatory work that would not otherwise have arisen.
 5. The single reason for refusal was that the development would conflict with the National Planning Policy Framework (the Framework) and Policy GN1 of the West Lancashire Local Plan 2012-2017 (LP). By virtue of its siting, they considered that the development would result in harm to the openness and visual amenity of the Green Belt. It went on to state that no special circumstances had been submitted or were apparent that would outweigh the harm to the Green Belt.
 6. The Council has accepted the reason for refusal was drafted incorrectly and that neither the openness of the Green Belt or the need for 'very special
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- circumstances' should have been included. Nonetheless, the Council have argued their concerns were primarily related to the siting of the building and the impact on the visual amenity of the Green Belt. As such, they consider that the application would have been refused in any event and the appeal would still have taken place.
7. Whilst the Council's decision notice makes reference to the impact on visual amenity of the Green Belt, there is no specific reference to this in the officer report. There is reference to the siting of the building away from the nearest building and the prominence of the building when viewed from Mossy Lea Road. However, both references are in relation to the impact of the development on openness of the Green Belt. I recognise the effect on openness can have a visual dimension and the visual amenity of the Green Belt is referenced within the Framework. However, impact on openness does not automatically equate to impact on character and appearance and the officer report does not make this connection, particularly in relation to any other relevant policies.
 8. There is no reference in this section of the report to Policy GN3, which relates directly to the character and appearance of an area. If there were a more general concern over the impact on the 'visual amenity' of the area, it would be reasonable to assume this policy would have been referenced, particularly as it had been referred to in an earlier reason for refusal for an agricultural building on the same site. Moreover, this policy is referenced elsewhere in the report and no harm was identified in relation to its requirements.
 9. I am not convinced by the evidence before me, therefore, that if Green Belt policy had been interpreted differently the Council would have inevitably come to the same conclusion. Even if this were the Council's intention, the officer's report is not clear or unequivocal in this regard. There is little to suggest in the report that there was any general concern over the impact on the character of the area, only that the development would unacceptably harm the openness of the Green Belt. From both the officer report and decision notice, the applicant would have been forgiven for assuming that issues relating to policy GN3 that had led the previous application to be refused, had been adequately addressed. There was nothing to suggest that the resulting grounds of appeal should not focus on general Green Belt principles. Therefore, introduction of this policy as a key part of the reason for refusal at the appeal stage is clear evidence of unreasonable behaviour which has led to wasted expense in terms of the preparation of rebuttal evidence.
 10. I acknowledge that Policy GN1 indicates that 'any relevant local plan policies' are part of the determination of an application within the Green Belt. Nevertheless, the time at which such policies should be highlighted and considered is during the determination of the application. It is not reasonable to introduce or rely on these policies at the appeal stage. I find, therefore, that the Council have not substantiated the main elements of their reason for refusal and have sought to base their appeal evidence on only a fragment of the initial reasoning. Whilst the effect of a development on the character and appearance of an area is a matter of judgement, on the basis of the Council's officer report, it is not clear the application would have been refused if proper regard had been given to local and national Green Belt policy. In this regard, there is also evidence of unreasonable behaviour that has led to the unnecessary cost of an appeal.

11. Neither the reason for refusal nor the officer report highlighted any concerns in relation to the living conditions of nearby residents. Nonetheless, the Council's appeal statement stated there would be an impact on their visual amenity and enjoyment of their living conditions.
12. The Council have argued that their consideration of the impact on neighbouring properties in the officer report dealt only with the impact on sunlight and not visual amenity. However, the neighbour raised concerns over the impact on their outlook at the application stage and thus the Council had an opportunity to address it during the application. They raised no objection to the siting of the building either in terms of the living conditions of the neighbour or the visual impact of the building from their vantage point. The introduction of the impact on living conditions as an issue at the appeal stage when there had been no change in context or new evidence is unreasonable. Whilst the rebuttal evidence from the applicant is not extensive, it should not have been necessary to address this issue at all and thus has led to wasted expense.
13. There is some discussion in the evidence on costs relating to errors in the description of the development. However, I do not consider this to have any bearing on my decision.
14. In conclusion, I find evidence of unreasonable behaviour that has led to wasted and unnecessary expense in terms of preventing development which should have been permitted having regard to national and local policy, failing to substantiate the reason for refusal and introducing fresh and substantial evidence at the appeal stage which was not raised in the initial consideration of the application, leading to the need for additional work that should not have been required.

Costs Order

15. 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 West Lancashire Borough Council shall pay to Mr M. Myers, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to West Lancashire Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S J Lee

INSPECTOR