
Costs Decision

Site visit made on 28 February 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 29th March 2017

Costs application in relation to Appeal Ref: APP/V2255/W/16/3164817 Owens Court Farm, Owens Court Road, Selling, Kent ME13 9QN.

- 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 FW Mansfield & Son for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a cold store.
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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 parties will normally be expected to meet their own costs in relation to appeals and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process. The PPG states that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis can constitute unreasonable behaviour.
 3. The appellant states that it should not have been necessary to submit an appeal against the Council's decision to refuse planning consent. Although the application was refused by Members contrary to the advice of its professional Officers, the Council is perfectly entitled to disagree with that advice, provided this is based on sound, substantive and defensible planning grounds. Similarly, whilst the views of local residents must be taken into account, the extent of local opposition is not in itself a reasonable ground for resisting development. To carry weight opposition should be founded on valid planning reasons and supported by appropriate evidence.
 4. Broadly speaking, the Council's reason for refusal raises three fundamental concerns; whether there is a need for the building, its visual impact on the countryside and the effect on local residents. The reason is somewhat vague and fails to clearly set out the harm that would be caused to the amenity of the area or the character of the countryside or exactly how the cited policies would be offended.
 5. In respect of need, the application was accompanied by a detailed business case setting out the putative reasons why the building was necessary. This was evidently scrutinised by the Council's Agricultural Consultant and found to be acceptable. The Council's response to these matters is limited to a short
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paragraph¹ which makes the case that the appellant's requirements could be met by a mobile chiller unit. Such a view is patently unsupported by objective analysis and relies in large part on the views of local residents. Moreover, the Council has failed to present any evidence to rebut the appellant's case set out in the Design and Access Statement.

6. In terms of its effect of on the character and appearance of the area, the Officer's Committee Report contains a fairly detailed analysis of the building, its location and effect on the area and the adjacent AONB. I appreciate Members visited the site and came to a different view. However, there is nothing in the Council's Appeal Statement or the Minutes of the Committee Meeting which explains how the building would harm the AONB or surrounding area.
7. Finally, the Council has raised various concerns under the umbrella of '*harm to amenities*'. However, no objections were raised from the Council's specialist consultees in these areas and it seems to me that these concerns rely exclusively on the extent of local opposition without the support of objective appraisal and substantial evidence. In particular, the lack of any detailed and specific technical evidence in relation to noise or highway matters, means that the Council is not able to substantiate its claim that there would be harm arising from increased activity at the site. Indeed the evidence in relation to highway matters clearly demonstrated that there would be a reduction in vehicular activity. The Council's stance is therefore illogical.
8. The Council also raised the prospect of the building being used for '*other purposes*'. It is not clear what specifically the Council is concerned about but in any event, these concerns could have been addressed by the imposition of a suitable planning condition.
9. The appellant's claim also alleges that the Council acted unreasonably by failing to explain to Members of the Planning Committee that an award of costs was likely to follow if they rejected the recommendation in the Officer's Committee Report. However, it is evident from the Minutes that there was a debate which followed a site visit by the Committee. Whilst there is nothing before me to indicate that Members were specifically advised of the likelihood of an appeal in this case, I find it unlikely that Members of a Planning Committee would not be conversant with the possible implications of refusing a planning application. Consequently, this failure in itself is not indicative of unreasonable behaviour.

Conclusion

10. Whilst the need for the building and its subsequent effect on the area are a matter of planning judgement, it is incumbent on the local planning authority to produce evidence to support its decision on appeal. However, in this case, the alleged lack of need and the effect on the AONB and living conditions of local residents is a matter of assertion, lacking in analysis and without sufficient regard to the views of the Council's specialist officers. As such, the Council's stance is vague and generalised and it has failed to demonstrate reasonable grounds for its decision.
11. For these reasons, I consider that the Council behaved unreasonably in respect of the substance of the case, which resulted in expenditure being incurred

¹ Paragraph 4.6 of the Council's Appeal Statement

unnecessarily in pursuing the appeal. Accordingly, I conclude that a full award of costs is justified in this case.

Costs Order

12. 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 Swale Borough Council shall pay FW Mansfield & Son the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the Swale 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.

D. M. Young

Inspector