
Costs Decision

Site visit made on 5 June 2017

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 21 June 2017

Costs application in relation to Appeal Ref: APP/W1850/W/17/3169420 Land adjacent to Orchard Farm, Comberton, Orleton, Leominster, Herefordshire

- 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 and Mrs Colin Mason for a partial award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for a proposed 2 bedroom dwelling and garage, workshop/implement store. Form new access and close existing.
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Decision

1. For the reasons that follow the application for an award of costs succeeds in part, in the terms set out below.

Reasons

2. 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.
 3. The Council's decision sets out 4 reasons for refusal: effect on the countryside; highway safety; ecology and sustainability. The application is made for the Council to pay the Appellant's costs of having to bring this appeal in the light of the PPG. It is based on both procedural and substantive grounds. It is an application for a partial award relating to the Ecology and Highway issues.
 4. The Appellants have stated that the application was validated by the Council on 6 October 2016 and consultation with the Council's Ecologist and Highways Officer was not made until 4 November 2016. The responses from both officers were both dated 28 November 2016 and were within normal time frame limits. However, the responses were not published until after the decision was issued and the Appellants were not notified of these responses despite an email to the Planning Officer dated 22 November 2016. The application was refused on 30 November 2016. It is claimed that, in effect, the consultation responses were concealed from the Appellants and this constitutes unreasonable behaviour as set out in the PPG paragraph 047.
 5. In relation to Ecology, the Appellants state that these issues are nearly always capable of resolution either by adjustments and additional measures being incorporated into the scheme or by planning conditions. The Appellants contend that they were not given the chance to respond to the Council's comments. In relation to the Highways issue it is claimed that the submitted Highways report was not fully evaluated by the Highways Officer which is unreasonable. The
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- Council has failed to substantiate the highways reason for refusal. It is argued that this unreasonable behaviour is a recurring feature of the Council's administration in the Northern Area as can be seen in two recent appeal costs decisions at Yarpole. The Council has acted unreasonably. This has caused the Appellants to incur the costs of the matter having to be determined at appeal.
6. In relation to the Ecology issue it is clear to me that consultation response from the Council's Ecologist was not conveyed to the Appellants until after the decision had been made. My conclusions on the Ecology issue are set out in my appeal decision and from the evidence that is before me and the prevailing planning policy there were several matters which were not resolved. These concerns could have been addressed if the Council's Planning Officer had conveyed the concerns of the Council's Ecologist to the Appellants in a timely manner. The Council claims that this was due to a lack of resources. However, I consider that the Appellants received poor service from the Council which resulted in the Ecological consultation response being concealed from the Appellants. This is unreasonable behaviour and it falls within the list of procedural irregularities set out in the PPG.¹ The Appellants incurred the cost of proceeding with the subsequent appeal on this issue. I consider that this expense was unnecessary and could have been avoided.
7. In relation to the Highways issue it is also clear that the Appellants were denied the opportunity to deal with comments from the Highways Officer during the planning process even though an email from the Appellants' agent dated 22 November 2016 made it clear that is what he wanted to do. Although I supported the Council's case on the highways issue on the evidence that was before me the Appellants were denied the opportunity to discuss and possibly resolve the highway issue with the Council. This lack of co-operation with the other party and the delay in providing information concealed important information from the Appellants. This is unreasonable behaviour and it falls within the list of procedural irregularities set out in the PPG.² The Appellants incurred the cost of proceeding with the subsequent appeal on this issue. I consider that this expense was unnecessary and could have been avoided.

Costs Order

8. 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 Herefordshire Council shall pay to Mr and Mrs Colin Mason, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the matters raised by the reasons for refusal 2 and 3 (highways and ecology); such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Herefordshire 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.

Harold Stephens

INSPECTOR

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Ibid