

Costs Decision

Hearing Held on 5 June 2019

Site visit made on 5 June 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th July 2019

Costs application in relation to Appeal Ref: APP/A2470/W/18/3211129 Lyndon Top Farm, Lyndon Road, Manton, LE15 8RN

- 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 Kerry for a full award of costs against Rutland County Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of a temporary rural workers dwelling and agricultural building.
-

Decision

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

The submissions for Mr Kerry

2. The application was made in writing. The following additional points were made orally at the hearing.
3. The applicant considers that the Council produced no evidence which challenges their own in respect of the financial and functional need and made vague generalised and inaccurate assertions, waiting until 2019 to expand on their case. Further, that the Council implied in an email dated 19 March 2019, in response to an email regarding suggested hearing dates, that their agricultural consultant would be attending. Therefore, they had expected the Council's agricultural consultant to attend the hearing and, on that basis, requested their own agricultural consultant to attend. The applicant also stated that at the hearing the Council's representative made no comments which rebutted their evidence in respect of need.

The response by Rutland County Council

4. The Council's response was made in writing with the following additional points made orally at the hearing in response to the appellants oral submission.
5. The Council considers that they justified their case in respect of need in their report, that it is not incumbent on them to inform the applicant who would be attending the hearing on their behalf and, that in any event the venue would not have been available earlier. Furthermore, the applicant is aware how sensitive the site is and could have engaged in pre-application advice as suggested by the National Planning Policy Framework (the Framework).

Reasons

6. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The basis of the application is that the Council acted unreasonably in substantive matters relating to the application, in making vague, generalised or inaccurate assertions about the proposal which are unsupported by any objective analysis, failing to substantiate its reasons for refusing the application and preventing development which should have been permitted.
8. The Council's reason for refusing planning permission, as set out in its decision notice, consists of two distinct elements; consisting of the lack of a functional need and that the proposed development would cause harm to the Rutland Water landscape. As can be seen from my decision I agree with the Council that there was justification for refusing planning permission on grounds related to landscape matters alone. It follows that I am satisfied that the Council has shown that it was able to substantiate its reason for refusal in this respect.
9. With regard to functional need, the Council's interpretation of their policies is that the applicant should demonstrate an existing functional need for a dwelling in order to be in compliance with the development plan. This matter is in dispute and as can be seen from my decision I have found in the applicant's favour in this respect. However, whilst I disagree with the Council's interpretation of policy in respect of need, it is evident that they would have refused the application for reasons relating to landscape harm alone with which I agree. The Council have not therefore prevented or delayed development which should have been permitted.
10. The applicant provided an appraisal in support of the proposal and submitted financial accounts relating to a similar enterprise in Nottinghamshire, also in their ownership. There is little analysis of the appraisal in the officer's report and whilst the appeal statement provides some further analysis the Council did not provide objective analysis of the information contained in the appraisal or any substantive contradictory evidence. I therefore consider the Council's view that there is no functional need for the development is a generalised assertion.
11. The Council implied in an email dated 19 March 2019 that their agricultural consultant would be attending the hearing. Whilst it is not incumbent on the Council to inform the applicant who would be attending and regardless of whether or not the venue would have been available earlier, it seems to me on the basis of the applicant's letter of 28 March 2019, which was copied to the Council, that the applicant would not have instructed their agricultural consultant to attend had they been aware that the Council would have no such representation. Overall, for the reasons given above I find that the Council has acted unreasonably in failing to substantiate its reason for refusal in respect of need.
12. However, in presenting the case the applicant largely relied on material that had already been prepared and submitted with the application. Therefore, the only costs which were unnecessary were those associated with the attendance of the applicant's agricultural consultant at the hearing. I therefore conclude

that a partial award of costs, to cover this expense incurred by the applicant, is justified.

Costs Order

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 Rutland County Council shall pay to Mr Kerry the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred with the attendance of the applicant's agricultural consultant at the hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the 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.

Felicity Thompson

INSPECTOR