
Costs Decision

Site visit made on 4 November 2019

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 22nd November 2019

Costs application in relation to Appeal Ref: APP/H1840/W/19/3235302 Land adjacent to Harvest Barn, Smite Lane, Hindlip, Worcs WR3 8SZ

- 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 Mark Vivian for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for change of use of field to residential curtilage.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another to incur unnecessary or wasted expense in the appeal process.
3. The Council's delegated decision report suggested that because the proposed change of use was not related to outdoor sport, cemeteries or burial grounds, it must be inappropriate. For the reasons set out in my decision on the appeal itself, I agree that this advice was erroneous, in so far as it failed to recognise that these were only examples, and NPPF paragraph 146 (e) did not preclude other types of land use change.
4. In addition, although the delegated report accepted that the impact on openness would be small, it failed to go on to consider whether the harm to openness could be overcome by conditions.
5. In both these respects, the Council's reasoning leading to its decision on the application was flawed. Moreover, the Council's subsequent appeal statement fails to either substantiate or withdraw these aspects of its reasoning. There is no evidence of the Council having reviewed its position in the light of receiving the appellants' arguments on these points. In these respects the Council's handling of the matter fell short of the standards that should be expected, and was therefore unreasonable.
6. However, the Council's decision to refuse permission rested not only on these points, but also on the question of encroachment into the countryside. On that matter, although the arguments advanced by the Council were very limited, and indeed in my appeal decision I have disagreed with them on the point, nonetheless this was very much a matter of judgement. It was therefore not

unreasonable for the Council to take the view that the development would conflict with one of the GB's purposes.

7. It follows that, even if the Council had not fallen into error on their interpretation of paragraph 146 (e), or on the matter of openness, their view on the encroachment issue would not have been an unreasonable basis on which to refuse permission and contest the ensuing appeal. The costs of the appeal would therefore not have been avoided.
8. I therefore conclude that it has not been demonstrated that the Council's unreasonable behaviour gave rise to unnecessary or wasted expense. In the circumstances, no award is made.

J Felgate

INSPECTOR