



Costs Decision

Site visit made on 19 November 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Costs application in relation to Appeal Ref: APP/P1615/W/19/3235218 Agricultural Building, Eastwood Lodge Farm, Woolaston, Lydney, Gloucestershire GL15 6PU

- 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 John Williams for a full award of costs against Forest of Dean District Council.
- The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted for the retention of agricultural building with amendments to include flue and roof light without complying with a condition attached to planning permission Ref P0171/08/FUL, dated 16 July 2008.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant considers that the Council failed to provide compelling evidence to explain why the condition under dispute met the six tests for planning conditions set out in the National Planning Policy Framework (the Framework) and relied on vague and generalised assertions unsupported by any objective analysis. Furthermore, the detailed case presented to the Council ought to have caused it to review its case promptly. Had it done so, this would have revealed the weaknesses in its arguments, thereby avoiding the need for the appeal. Consequently, the applicant incurred the unnecessary costs of making the appeal.
4. The PPG further advises that local planning authorities are required to behave reasonably in relation to the substance of the matter under appeal, and a list of examples is given including the failure to produce evidence to substantiate each reason for refusal on appeal or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Further examples include imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects and the Council not reviewing their

case promptly following the lodging of an appeal against an application to remove or vary one or more conditions, as part of sensible on-going case management.

5. There is a long and complex planning history relating to the appeal building covering the period prior to the grant of the original consent, and since condition 2 was imposed. This includes several planning appeal decisions, a breach of condition notice and legal challenges in relation to that notice. Both parties made extensive reference to the planning history. However, the central question in the appeal was whether condition 2 met the six tests in the Framework rather than the merits of the breach of condition notice.
6. The Council's case included an 11 page officer report that specifically refers to the six tests in the Framework which was supplemented by the statement of case and appendices provided. This shows that the Council did not fail to promptly review its case but rather indicates a significant difference of opinion between the parties as to how the tests for conditions should apply to the complex circumstances of the appeal building.
7. The planning purpose for condition 2 was adequately substantiated by the Council in its officer report and statement such that it was clear that the Council would not ordinarily allow for buildings in the location of the appeal site and therefore, sought to impose safeguards to prevent the proliferation of buildings in the countryside. It will be seen from my decision that I accepted that this was justified to an extent, the essential question was then what degree of control would be reasonable in the circumstances. This required the exercise of planning judgement and therefore, there may feasibly be a range of responses that could be justified without amounting to unreasonable behaviour.
8. Although, I ultimately came to a different judgement from the Council, I am satisfied that overall, it provided adequate substantiation for the reason for refusal and therefore, this did not amount to making vague, generalised or inaccurate assertions about the proposal's impact.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case as the assessment of the condition against the tests involved a planning judgement. The appeal provided an opportunity to test the planning judgement made by the Council and the appellant has not been put to unnecessary or wasted expense in doing so.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector