
Costs Decision

Site visit made on 29 August 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2019

Costs application in relation to Appeal Ref: APP/J1915/W/19/3231172 Highfield Farm, Mangrove Lane, Hertford SG13 8QJ

- 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 Andrew Winer for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal planning permission for standalone solar panels 15kw.
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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 contends that the Council did not give the application due consideration, because it did not re-visit the site and instead relied on photographs taken during the visit for the previously refused application¹ and therefore had little regard for the wider site and the impact the proposal would have. The Applicant also contends that the Council did not engage; referred to paragraphs 145 and 146 of the National Planning Policy Framework (the Framework) but not to policies the Applicant quoted; the Council's report was similar to the previous one and as a result the Council did not consider the application in a positive and proactive manner. Therefore, the Council has behaved unreasonably.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The Council contends it did not act unreasonably in a way that caused unnecessary costs or wasted expense. The Council has confirmed that a further visit was not required as a site visit had recently been carried out for the previous application and photographs were taken. The officer report was well reasoned and detailed and a thorough assessment of the site history informed the decision. The Council report also referred to the application being a

¹ LPA ref: 3/18/2724/FUL refused 7 February 2019

resubmission and that the re-submitted Design & Access Statement mentioned Framework paragraphs 145 and 146. An assessment of the impacts on the Green Belt were undertaken, as well as assessing the design/layout, impact on neighbour amenity, noise and highways. Full consideration was given to the application and its accompanying documents.

6. I note that the resubmitted application was submitted 7 days after the previous application was refused. It would have been apparent from the Applicant's submitted Design & Access Statement and plans that the application was a re-submission and nothing significant had changed since the previous application, i.e. the same number and arrangement of solar panels were proposed for the same location. As nothing significant had changed, the photographs from the previous visit would have been a useful aide memoire for the officer. Furthermore, the progress of the Applicant's conversion and building projects was not crucial to witness, as the Council was already aware of the planning history of the site and the timescales of the various permissions. The Council is entitled to consider how best to use its staff, time and limited resources in the public interest. In light of the timescales and that the resubmission was fundamentally the same, I find the Council was within its rights not to re-visit. This does not amount to unreasonable behaviour.
7. In its officer report, the Council clearly explained the proposal, its impact on the Green Belt and weighed up other considerations. Reference to paragraphs 145 and 146 is necessary as the Framework it is a material consideration for the assessment of any Green Belt application, and I have done the same in my decision. I therefore find the Council has not been remiss in this and has followed due process for determining applications in the Green Belt.
8. For the reasons set out in my appeal decision I too found that the Applicant's proposed use of renewable energy to power the various dwellings, holiday lets and agricultural buildings .did not outweigh the harm caused to the openness of the Green Belt. The progress of the various building works was not pertinent to this.
9. I find that the Council has not acted unreasonably. Therefore, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

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

K. Stephens
INSPECTOR