
Costs Decision

Site visit made on 10 December 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Costs application in relation to Appeal Ref: APP/C1625/W/19/3238227 Land off Ryalls Lane, Cambridge, Gloucestershire GL2 7AU

- 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 K Wherrett for a full award of costs against Stroud District Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for the erection of a general purpose agricultural building for storage of winter fodder, agricultural implements and to provide animal shelter in adverse weather conditions.
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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 considers that the Council failed to take proper account of the information provided as part of the original application. Had they done so, his view is that they would have approved the proposal. As a consequence, he has incurred the costs associated with an unnecessary 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 acting contrary to, or not following, well-established case law.
5. The applicant's case essentially relies on the Council having erred in their interpretation and application of paragraphs A.1(i), A.2(1)(a) and D.1(3) respectively, of Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
6. However, the case of *R (on the application of Marshall) v East Dorset District Council and Pitman* [2018] EWHC 226 (admin) (the Marshall case) confirmed that local planning authorities, do not have power under Part 6 of the Order to determine whether or not the proposed development comes within the description of the relevant class, or would comply with the limitations or restrictions applicable to development permitted in the Order.

7. Furthermore, the case indicated that the appropriate time to consider such issues is in response to an application for a certificate of lawfulness, an application for planning permission or potentially in the context of enforcement proceedings.
8. It is reasonably clear from the wording of the decision notice that the Council purported to decide whether the proposal met the limitation set out in paragraph A.1(i) of the Order. However, the caselaw indicates that this matter is outside the scope of the prior approval process whereby the decision is confined to the matters of siting, design and external appearance of the building in accordance with condition A.2(2)(i) of the Order. It follows that the Council's actions were unreasonable as they failed to follow relevant well-established caselaw.
9. However, it is less clear that this behaviour has resulted in unnecessary or wasted expense for the applicant as neither party expended significant efforts in relation to the matters of siting, design and external appearance of the building as part of the appeal process. Rather both main parties focussed on the main areas of dispute between them relating to whether the proposal fell within the description of the class of development and the limitation imposed by paragraph A.1(i) of the Order. This was the case, even though these were not matters that could, in the light of the caselaw, be resolved by this appeal process. Planning Practice Guidance (PPG) indicates that if it is not clear whether works are covered by permitted development rights, it is possible to apply for a lawful development certificate¹.
10. Moreover, it is appropriate and reasonable that the Council should make their view known to the applicant at an early stage that the proposal would not fall within the description and limitations of permitted development in Class A, Part 6 of the Order. Accordingly, these are matters that ought to be resolved in addition to the detailed matters of siting, design and external appearance. As such, the material prepared by the applicant in this regard is neither wasted nor unnecessary.
11. In reaching this view I am aware that the applicant has had the benefit of being professionally represented by a firm who state that they are very familiar with the agricultural permitted development rights under the Order² and therefore, would have been able to advise the applicant as to the most appropriate course of action in light of national guidance and caselaw.
12. Accordingly, although the Council did act unreasonably, it is not clearly demonstrated how that unreasonable behaviour has resulted in unnecessary or wasted expense.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector

¹ Paragraph 024 Reference ID: 13-024-20140306

² Covering Letter & Planning Statement dated 5 August 2019