
Costs Decision

Hearing Held on 13 November 2019

Site visit made on 12 and 13 November 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Costs application in relation to Appeal Ref: APP/P1615/W/19/3227375 Clearwell Farm, The Rocks, Clearwell GL16 8JR

- 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 Newland Parish Council for a full award of costs against both Mr Stephen Hay and Forest of Dean District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a poultry building.
-

Decision

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

The submissions for Newland Parish Council (the Parish Council)

2. Full submissions were made in writing at the hearing.
3. In essence, costs were claimed against Mr Stephen Hay (the appellant) on the basis that a lack of evidence had been provided to allow a full assessment of the proposal and all material considerations, and there was an overreliance on existing activities at the site. It was also alleged that the intentional manner in which the development proceeded was unreasonable.
4. It was further claimed that Forest of Dean District Council (the District Council), in spite of legal advice being provided by the Parish Council, misinterpreted and misunderstood policy, application requirements, and did not properly assess all material considerations. The Parish Council feels that it has had to take on the role of steward of this part of the Forest of Dean and fulfil actions that should have been undertaken by the District Council.
5. It was submitted that only on the basis of the Parish Council's actions was the recommendation overturned at committee and the application refused planning permission. The number of recommended conditions indicates that there is still a lot of information outstanding. Further work appears to be required by all parties and highlighting this goes far beyond what should be expected of a Parish Council.

The response by the appellant

6. Whilst it is accepted that the application is retrospective, the appellant submits that he has worked with the Council and provided additional technical information as requested. The application was refused by the planning committee, contrary to an officer recommendation and the appellant cannot be

acting unreasonably in exercising his right to appeal. Evidence has been provided through the appeal process with regard to addressing the reasons for refusal. The appellant has attended the hearing, represented by expert witnesses. Nothing in these actions can justify a costs claim against him.

The response by the District Council

7. A full response was provided in writing.
8. In essence, the District Council submits that the appeal has followed the hearing procedure following the request of the Parish Council. The District Council refused permission and the appeal has allowed the Parish Council an opportunity to provide evidence in relation to material considerations. The Council merely determined the application on its own merits, based on information provided by the appellant, statutory consultees and third parties.
9. In respect of the appeal, the District Council say that they have co-operated with the Parish Council and others in the process, met all relevant deadlines, attended the hearing and not given the Parish Council any wrong information. A difference of opinion does not justify an award of costs.

Reasons

10. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

In respect of the claim against the appellant

11. The District Council were satisfied that the appellant provided all necessary documents to allow an assessment of the proposal. Where additional information was requested, for example in respect of the structural integrity of the caves, this was provided.
12. The District Council's ultimate decision was to refuse permission for one narrow reason. Whilst the Parish Council has consistently challenged the lack of information in respect of other matters, no extensive counter evidence in respect of those other matters, unrelated to the main issues, has been provided. Even if such information would have been desirable, as it was not requested by the District Council as Local Planning Authority, its omission by the appellant is not unreasonable behaviour.
13. Whether or not unauthorised development at the site was carried out intentionally, the planning system allows for permission to be sought after development has taken place. There is no clear evidence that the retrospective nature of the development has led to further expense by the Parish Council in the appeal process that would not have been incurred if permission had been sought first.

In respect of the claim against the District Council

14. The District Council has provided a full defence of the reason for refusal and was not reliant upon the Parish Council to do so. The District Council made a judgement in respect of other material considerations as set out in the officer's report to the planning committee when considering the planning application. Whilst the Parish Council's representations may have been influential in the ultimate decision to refuse the application, the refusal on one narrow issue

indicates that the District Council remained content in respect of other matters. That the Parish Council wished to raise other matters, aside from those main issues, at the appeal stage is not an indication of unreasonable behaviour on the part of the District Council.

15. Notwithstanding the above, as set out in my main decision the appeal ultimately turned on a second main issue in respect of the effect on the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC). This matter was not contested by the District Council and the Parish Council provided substantive evidence, including attendance at the hearing by an expert witness in respect of ecological matters.
16. In considering this matter, the District Council had effectively decided to overrule an objection from Natural England (NE) as Statutory Nature Conservation Body. Whilst I have not agreed with that position, it was a decision for the District Council in the role of competent authority under the Conservation of Habitats and Species Regulations 2017 at that time.
17. Furthermore, NE clearly indicated that any decision of the District Council to grant permission would have been subject to further referral to NE which could have resulted in a different outcome. Having resolved to refuse the application that requirement fell away. Given the inherent uncertainty surrounding the ultimate decision of the District Council had NE been further consulted, I have insufficient evidence to conclude that the District Council's actions in respect of the Appropriate Assessment at application stage were unreasonable.
18. As it was not a reason for refusal, I understand that the Parish Council may have felt compelled to bring further evidence in respect of the SAC. However, the District Council fully engaged with the issue to assist my consideration of the appeal. Ultimately, there is no compelling evidence that had the District Council fully accepted the Parish Council's concerns at application stage that an appeal, and any associated expense, would have been avoided.
19. I understand that the Parish Council has committed significant financial sums so as to participate fully in the appeal proceedings. However, I have no conclusive evidence that they had to do so in order to take on functions that might otherwise have been undertaken by the District Council, which has also participated fully in proceedings.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Bale

INSPECTOR