
Costs Decision

Site visit made on 17 December 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 January 2020

Costs application in relation to Appeal Ref: APP/Z3825/W/19/3236648 Southlands Farm, Southlands Lane, West Chiltington RH20 2JU

- 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 B F Armstrong and Son for a full award of costs against Horsham District Council.
 - The appeal was against the grant subject to conditions of planning permission for change of use of existing barns to form a wedding venue with ancillary facilities (kitchen and toilets), erection of a bar, and the replacement of a lean-to structure.
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Decision

1. I refuse the application for an award of costs.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306).
3. It is noted that the development was stated on the application form to have been started without consent on 1 February 2018, some 19 months before the grant of permission subject to conditions. That explains the wording of disputed numbers 2) and 3) requiring details to be submitted within 2 months and for action to be taken within a further 1 month after the details had been agreed. It is further noted that the Council chose not to employ the more onerous version of such conditions, which provides for the permission to lapse in default.

Condition 2)

4. The drawing '*parking_plan.pdf*' is of poor quality and does not acknowledge the existence of earth banks or make clear the amount and nature of any pre-existing hardstanding or any that is yet to be laid. It was noted at the site inspection that parking was taking place on a loose-bound area outside the red-line site boundary, and that part of the allocated parking area shown on the submitted drawing was occupied by bales. Whilst the wording of the condition has been amended to permit the use for agricultural storage outside the wedding season, the use of the condition as originally worded was not unreasonable in light of a retrospective application and the poor quality of the submitted information.

Condition 3)

5. The Council states that the venue was visited and the access track which the appellant claims had been laid some years previously, was considered in a poor condition with some loose material. The need for 20m of properly bound material is a reasonable expectation in view of the numbers of users and a change of use and a new planning permission is an opportunity to ensure that the required standard is met, if that had previously not been enforceable.
6. It is not possible to be sure whether the appellant or the Council were right in their appreciation of the situation at the time of the grant of permission, but as stated in the Appeal Decision, the key consideration is that the 20m of bound material is always in place. The wording has been changed to permit this checking and retention, and the need for the 2-month and 1-month periods is now considered superfluous. However, in granting a retrospective permission, such a requirement for clarification was reasonable and if the appellant is right in their recollection of the condition, the condition could have been readily discharged rather than appealed. There would always have been a need for the retention clause, to which has been added the word 'maintained'.

Condition 6)

7. The appellant states that as a legal definition '*between April and October*' excludes each of April and October. As a matter of plain English, a gap '*between*' things would exclude those things. The Council accept that the wording was meant to imply the use of a missing '*and including*' and suggests a clarified form of wording, although the appellant's alternative suggestion has been adopted in the Appeal Decision. It is apparent that had the appellant chosen to make an application under section 73 to have the wording changed, that application would have been granted. There was an error, but that appears to have been unwitting rather than unreasonable, and the appeal was not necessary or inevitable as a remedy.

Condition 7)

8. This condition has been removed entirely in the accompanying Appeal Decision, and not replaced. There are 10 other conditions which in various ways address the need to strike a balance between the business requirements and the rights of individuals to the peaceful enjoyment of their home. That is a qualified right under the Human Rights Act and one that requires a judgement as to how that balance is determined. The Appeal Decision results from the exercise of that judgement, and the Council's exercise of that judgement, whilst reaching a more restrictive conclusion, was not unreasonable.

Conclusions

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

S J Papworth

INSPECTOR