
Costs Decision

Site visit made on 17 December 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

**Costs application in relation to Appeal Ref: APP/A2470/W/19/3237829
Country Lounge Cafe & Bar, 5 Glaston Road (A47), Morcott, Oakham
LE15 9DL**

- 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 A Freeman for a partial award of costs against Rutland Council.
 - The appeal was against the refusal of planning permission for development originally described as: erection of five holiday chalets with associated storage facilities and car parking adjacent to the existing Country Lounge cafe and bar.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The application for costs is made in respect of a substantive matter, namely that the Council failed to determine similar cases in a consistent manner.
3. The applicant's claim relates to the Council's request for submission of a contamination assessment as part of the application, in contrast to three earlier applications, relating to the appeal site and the adjacent Country Lounge, where no such reports were sought. The applicant also states that even if such a report were necessary, it could have been subject to a pre-commencement condition.
4. From what I have seen and read, I find nothing unreasonable in the Council requesting comments from the Environmental Protection (EP) team or then seeking a Phase 1 investigation during the application, rather than by condition, given the proposal was for a habitable form of accommodation in proximity to an obvious potential source of contamination in the petrol station.
5. The Council was also consistent in consulting EP on the earlier application Ref 2017/0696/FUL for the same site, but this was withdrawn before comments were received. I do not have evidence of whether EP was consulted on the other two applications, Refs 2016/0335/FUL, 2018/0149/FUL, but even if this was an oversight or error on the Council's part, it is not unreasonable for the

Council to subsequently seek such information on a later application where the comments of a consultee indicate it to be a material consideration.

6. In any event, an assessment was undertaken by the applicant which identified some possible sources of contamination, and a further Phase 2 investigation was thus recommended by EP. The Council suggested a condition to this effect in the event the appeal was allowed. Again, I see nothing unreasonable in this approach as, importantly, the result of it was that the Council was satisfied that the matter could thereafter be resolved by condition. Thus, the issue of contamination did not form a reason for refusal of the application, and it has not been a matter contested at appeal. Any expenses in this matter accrued at the application stage and related to a valid material consideration. Therefore, quite simply, the applicant has not been put to expense in contesting the issue of contamination at the appeal stage.
7. For these reasons, I conclude that the Council has not exhibited unreasonable behaviour and the applicant has not been put to unnecessary or wasted expense at the appeal stage. No award of costs is therefore made.

K Savage

INSPECTOR