The Planning Inspectorate

Costs Decision

Hearing Held on 12 November and 19 December 2019 and 14 January 2020
Site visit made on 14 January 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Costs application in relation to Appeal A) Ref: APP/Q1153/C/18/3217615 Skywood, Spreyton, Crediton EX17 5AF

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr D Bifulco for a full award of costs against West Devon Borough Council.
- The hearing was in connection with an appeal against an enforcement notice alleging the erection of a steel-framed agricultural building.

Costs application in relation to Appeal B) Ref: APP/Q1153/W/18/3217614 Skywood, Spreyton, Crediton EX17 5AF

- 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 D Bifulco for a full award of costs against West Devon Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the retention of an existing building, retrospective approval of hedge removal and replacement to north of barn to be retained.

Decision

1. The applications for an awards of costs are refused.

Preliminary Matters

2. I have interpreted the appellant's application as relating to both appeals which have been linked and therefore processed together. This is therefore 2 applications albeit in relation to the same hearing.

3. The appellants concerns regarding the expense due to the receipt and passing on of documents consequently leading to the adjournment of the hearing, are outside of the scope of these costs applications.

Reasons

4. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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 PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal

process to behave in a reasonable way and follow good practice. The applications are on the basis of procedural and substantive matters.

5. Although the PPG stresses that it is good practice to make costs applications in writing before a hearing, at the very least they should be made to the inspector before closure of the event. Given that the Council did not have prior warning of the costs application before it was presented at the hearing and it was then submitted at the end of a long tiring day, I exceptionally allowed the Council to rebut the applications in writing. The rebuttal comments were received before I closed the hearing at the site visit.

6. The planning application being considered in Appeal B, was recommended to the planning committee for approval but was overturned by Councillors at their meeting on 16 October 2018. This followed a site inspection by the members of the committee. The committee minutes indicate that a number of Councillors were concerned about the building for reasons that were then set out in the reasons for refusal. Councillor Pearce appeared at the hearing and did, as the appellant suggests, misinterpret the function of the saw bench and trailer that was present in the building as well as the intention of the appellant. To an extent therefore the reasoning for the decision appears to have been ill-informed and clarification should have been sought. I agree that this was a reckless assumption to make which was unreasonable. However, the minutes indicate that Cllr Pearce's opinion was not the sole reason for the decision.

7. The building subject of the planning application and the enforcement notice had been previously refused and dismissed on appeal. I have referred to that previous appeal in my decisions. With this context in mind, it is not surprising that the committee members were sceptical about the justification for the building. The recommendation was a balanced one and not clear cut. It is unsurprising that the committee refused the application because the main issues are matters of judgement and the appeal process has resulted in further evidence being discussed. The cases were originally following the written representations procedure and it was my decision to change the procedure to a hearing because of the matters that I considered required discussion. This included a need to air the matters raised by interested parties.

8. The Council's decision to refuse the planning application was rational and finely balanced. It was logical to follow this up with the issuing of an enforcement notice to ensure that the building did not become lawful by default. An appeal was always therefore likely. The small degree of unreasonable behaviour in the above respects did not in itself, in my view, result in the appeal which was likely to happen anyway given that the appellant had purchased the site and clearly wanted to retain the building.

9. With respect to the change in development plan policies due to the adoption of the Plymouth and South West Devon Joint Local Plan, there was a degree of confusion about which policies were relevant and how they should be applied. This was not the only reason why the case warranted my decision to change the procedure to a hearing.

10. There does also appear have been a lack of discussion about the suggested conditions by the Council prior to the hearing. However there was a lengthy and useful discussion about potential conditions at the hearing with the appellant having the opportunity to present comments in writing. Overall this was a constructive process.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated with respect to these costs applications. An award of costs is not justified and the applications fail.

A Harwood

INSPECTOR