
Costs Decision

Site visit made on 28 January 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3238918 Siennas Valley Farm, Huntenhull Lane, Chapmanslade, Westbury BA13 4AS

- 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 Miss Sharon Snook for a partial award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for extension to agricultural building .
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. Paragraph 049¹ of the PPG provides examples of what constitutes unreasonable behaviour by local planning authorities. This includes failure to produce evidence to substantiate each reason for refusal on appeal or vague, generalised or inaccurate assertions about a proposals impact which are unsupported by any objective analysis; and also refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicant contends that the Council has not provided any evidence to substantiate the assertion that the siting, size and bulk of the extension exceeds the justified need. Furthermore, the Council failed to take into account the role of planning conditions to mitigate the potential harm arising from noise and odour nuisance. As such the applicant is seeking a partial award of costs in relation to defending the issues relating to need and odour/smell.
5. Turning first to the issue of the justification and need for a barn extension in this location, the Council have relied on evidence produced in support of earlier applications and appeals for this site. This assessment focusses on comments made by their agricultural consultant at the time. This evidence was not submitted as part of the appeal, and therefore no cogent evidence was produced by the Council to support this reason for refusal. As such I find that

¹ Paragraph 049 Reference ID: 16-049-20140306 revision date 06 03 2014

the Council has acted unreasonably by failing to produce evidence to substantiate a reason for refusal, as per paragraph 049 of PPG.

6. The applicant has stated that the Council acted unreasonably in respect of the issue of living conditions of neighbouring occupiers, as the impact of odour could be effectively mitigated against via an appropriately worded planning condition. Whilst I do not agree with the Council on this point, their assertion that they feel a condition is not appropriate does not constitute unreasonable behaviour as their reasoning was justified in both the officers report and subsequent appeal statements. As such in relation to the issue of living conditions, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated.

Conclusion

7. I therefore conclude that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG has been demonstrated in relation to the issue of the justified need for the development and that a partial award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Miss Sharon Snook, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's reasons for refusal relating to justification and need of the development.
9. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree to the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Shapland

INSPECTOR