



Costs Decision

Site visit made on 23 June 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Costs application in relation to Appeal Ref: APP/G1630/W/20/3246620 Cotton Acre, Near Noreen, Ashleigh Lane, Cleeve Hill, Cheltenham GL52 3QF

- 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 Mark Godsall for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of planning permission for erection of an agricultural storage building.
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Decision

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

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. This application claims unreasonable behaviour by the Council in terms of (i) taking into account concerns that the appeal site was not in agricultural use when this was not part of the proposal or a relevant issue, (ii) forming a view on the proposal without a site visit and only based on a third party submissions relating to effects on trees, (iii) failing to cooperate with the appellants by not requesting further information in respect of tree concerns, and (iv) refusing planning permission on grounds relating to the effect on trees that could have been dealt with by conditions.
3. The evidence indicates that the Council's planning officer enquired about the use of the appeal site before the planning application decision date. However, the Council's refusal reasons relate specifically to the effect of the proposed development rather than any use of the land. In assessing the merits of the proposal, it is appropriate to consider the purpose of the building and the use of the site in order to ascertain whether any benefits exist that would outweigh any harm caused. As such, the Council has not taken into account irrelevant matters in the determination of the planning application.
4. While the evidence indicates the Council's planning officer went to the site, it appears the Council's tree officer did not carry out a visit but commented on the proposal referring to a tree survey report¹ (Tree King report) provided by an owner of neighbouring land. No tree survey report was provided with the planning application and the Tree King report was prepared by a qualified

¹ Tree King Consulting Arboricultural survey dated September 2019.

arboricultural consultant so it is understandable that the Council referred to it when assessing the planning application. As the appellant has not disputed the accuracy of this report, there is no reason for the Council not to rely on its contents. The appeal submissions set out the reasons why the Council considered the proposal would have an unacceptable effect on trees and the development plan policy that would be contravened as a consequence. As such, I find no unreasonable behaviour in these regards.

5. The Council advise that if the proposal's effect upon trees was the only cause of concern it would have sought further information from the appellant before making its decision. However, as there is another refusal reason relating to the effect on the landscape, it is appropriate for the Council to determine the application based on the information that it had with it at the time.
6. In response to the appeal, the Council indicate its concerns relating to the effect on trees could be addressed through the imposition of planning conditions that refer to measures set out in the appellant's own tree report. However, this report was not provided with the planning application and so a condition referring to the protective measures it sets out could not have been imposed at the time of the Council's decision. Therefore, I am not persuaded that the second refusal reason could have been properly addressed by planning conditions based on the information provided with the planning application.
7. While I appreciate the appellant's frustration that planning permission was refused by the Council partly on grounds that have since been addressed, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Jonathan Edwards

INSPECTOR