
Costs Decision

Site visit made on 17 June 2020

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Costs application in relation to Appeal Ref: APP/R0660/W/20/3244352 Grasslands Nursery, Free Green Lane, Cheshire East, Over Peover WA16 9QY

- 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 S Watmore for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for a horticultural storage 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. The applicant submits that the Council has acted unreasonably because they have not accepted that the proposed building would be a horticultural building for the operations of the established and continually expanding nursery. They further consider that the Council has taken a different view on the appeal proposal than that which they took for a similar development which was granted planning permission in 2016.
4. In response, the Council has stated that they have outlined their evidence in their appeal statement, that their reason for refusal is accurate and that they worked positively and proactively with the applicant throughout the planning application process.
5. It is not in itself unreasonable for the Council to undertake a more detailed assessment than they did for the 2016 application, if there is evidence to justify this. It is also not unreasonable for the Council to have considered the proposed use of the building, particularly given the local and national policy provisions seeking to tightly control development in the Green Belt.
6. However, the Council's concern that the proposed development would not be used for horticultural purposes in conjunction with the established nursery business is not supported by substantive evidence. The Council suggests that the proposal may function primarily as a standalone building for storage and distribution whilst acknowledging the horticultural use of the wider site and that

any goods to be distributed from the proposed building would predominantly be those grown at the nursery.

7. Furthermore, the Council's submission suggests a fragmentation of the nursery site into different uses, including reference to the uses of existing buildings and to an increase in online sales over recent years. However, in this respect, the Council offers only a vague statement that part of the wider site includes uses where the balance may be tipped away from what would be reasonably necessary for horticultural use. No substantive evidence is provided in support of this opinion, or to demonstrate that it justified the refusal of the planning application.
8. The applicant submitted the planning application on the basis that the proposed building would be used for horticultural purposes and they set out a clear case in support of this. In taking the approach it did, it was necessary for the Council to substantiate its position regarding the use of the proposed building. That they failed to do this represents unreasonable behaviour.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Cheshire East Council shall pay to Mr S Watmore, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Cheshire East 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.

Graham Wraight

INSPECTOR