



Costs Decision

Site visit made on 14 July 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Costs application in relation to Appeal Ref: APP/D3125/W/20/3246508 Chimney Farm Barns, Chimney, Bampton, OX18 2EH

- 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 Fergus Mitchell for a full award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal of planning permission for building operations and introduction of windows and door openings to facilitate the residential use of the modern farm building at Chimney Farm Barns following the change of use from storage (Use Class B8) to a self contained residential dwelling (Use Class C3) by prior notification 19/01114/PN56.
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Decision

1. The application for an 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 needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes both procedural and substantive matters, such as prolonging the proceedings by introducing a new reason for refusal; introducing fresh and substantial evidence at a late stage; preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations; and, vague and generalised or inaccurate assertions about a proposal's impact which are unsupported by an objective analysis.
4. The applicant's original costs application was submitted on substantive grounds that the proposal fully accords with Policy OS4 of the West Oxfordshire Local Plan 2031, and the reason for refusal on the basis that there would be too many windows and rooflights is unjustified, unreasonable and unsupported by development plan policy. Following the submission of the Council's appeal statement, the applicant submitted an additional application for costs on procedural grounds that the Council's appeal statement includes an additional reason for refusal. The applicant states that this has resulted in unexpected additional costs being incurred to provide a landscape assessment and factual

evidence that was otherwise unnecessary for the defence of the windows and skylights proposed within the building.

5. In respect of the substantive grounds, the decision taken by the Council was contrary to the recommendation of its officers. Nevertheless, Council members are not bound to accept the recommendations of their officers, though they must act rationally on the basis of valid material planning considerations in doing so. The necessary judgement in cases of this nature are not always founded on prescriptive rules but are essentially subjective in nature, albeit having regard to policy and other guidance. In my view, the Council has produced sufficient evidence to substantiate the reason for refusal and it has not behaved unreasonably in that respect.
6. Turning to the procedural grounds, the Council's decision notice states that the scheme is considered overly domestic, with specific reference to the number of windows and rooflights. In its appeal statement, the Council introduces an additional matter in relation to the garden area to the west of the building and its effect on the character and appearance of the area. I do not find the Council's concerns to be unreasonable. Indeed, as set out in my appeal decision, I agree with the Council. However, to introduce an additional substantive matter at appeal stage, I find unreasonable behaviour on the Council's part.
7. Nevertheless, in order for a costs award to succeed, unreasonable behaviour must lead another party to incur "unnecessary or wasted expense". The Parish Council and interested parties had provided detailed comments in respect of the land to the west of the appeal building and this is a matter that would need to have been considered in my decision, regardless of the stage at which the Council introduced its objection. Thus, whilst I find that the Council was unreasonable in introducing an additional substantive matter at appeal stage, that unreasonable behaviour did not lead to any unnecessary or wasted expense. It follows that there are no grounds for an award of costs and I shall refuse the application.

C Osgathorp

INSPECTOR