



Costs Decision

Site visit made on 15 September 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Costs application in relation to Appeal Ref: APP/K1128/W/20/3252605 Barn at West Pitten, West Pitten, Plympton, Devon PL7 5BB

- 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 A Wright for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for demolition of an agricultural building and the construction of 3 detached dwellings, garages and site landscaping following approvals 0360/19/PDM and 1567/19/FUL.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance 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 indicates that the Council took an unacceptable amount of time to process the appeal application and did not request an extension to the statutory timescales. It is also suggested that the Council failed to make the required comparison to the fallback position using the principles established by the Mansell case¹. Lastly, it is claimed that outdated information has been used to assess the acceptability of the drainage scheme.
4. In respect of the delays on the part of the Council, it does appear that the appeal application was processed over a lengthy period of time. No explanation is given of this, nor any evidence of the lack of communication between the parties or otherwise. However, whilst this may be regrettable, it has not directly caused any wasted expense, nor extended to the timetables set as part of the appeal process.
5. It is clear from the evidence that in its deliberations, the Council applied its understanding of the fallback position and the principles established by the relevant caselaw, including Mansell. The conclusion reached was that the fallback did not constitute a consideration of such materiality that it outweighed the identified harm and associated development plan conflict. Whilst my comparison and final balancing exercise may differ from the Council's, the balancing of such matters is detailed and, in some instances, finely balanced. There is more than one possible outcome and I too have found that there are

¹ Court of Appeal VIA: Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

material differences between the appeal scheme and the fallback, with greater harm anticipated to derive from the former.

6. In relation to the drainage scheme, whilst it is regrettable that this outstanding matter was not resolved prior to the issuing of the decision, I note that the revised information was only submitted in March 2020, before the application was decided in early April. This would have provided little time to enable any consultation with a specialist advisor to have been undertaken. In any event, it does not appear that any additional technical evidence has been prepared as part of the preparation of the appeal, and consequently, if any, very limited expense can have been incurred in addressing this matter.
7. Consequently, based on the information before me, there is no evidence to demonstrate that the Council has behaved unreasonably, either substantively or procedurally, in relation to its consideration and determination of the matter at either application or appeal stage. The appeal was unavoidable in relation to the main issues and the applicant was not unnecessarily put to the expense of submitting the appeal.
8. For these reasons, and having regard to all other matters raised, an award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR