
Costs Decision

Site visit made on 30 September 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Costs application in relation to Appeal Ref: APP/N2739/W/20/3256926 Valley House Farm, Moor Lee Lane, Eggborough, Selby DN14 0PX

- 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 Wright for a full award of costs against Selby District Council.
 - The appeal was against the refusal of an application for planning permission for development described as retrospective planning for the erection of steel framed building for use as a garage.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Patently this is a two stage test. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. The applicant's claim has a number of grounds. In summary and in their view, these relate to the Council i) refusing planning permission based on an irrelevant policy; ii) failing to recognise the building was a replacement; iii) failing to acknowledge that employment buildings are not the only well designed new buildings in the countryside to result in economic benefits; iv) refusing planning permission despite concluding no harm would arise from the development; v) been inconsistent in their refusal of the development type in the location proposed; and vi) failing to properly exercise their responsibilities, specifically the matter of the tilted balance and paragraph 11 of the Framework¹.

¹ The National Planning Policy Framework 2019

4. I do not consider Policy SP2 of the Local Plan² to be an irrelevant policy. The parties seem to agree that it is aimed at a strategic level. It is nonetheless relevant in identifying what types of development may be acceptable in the countryside. Which is where the appeal site is. Thus, the policy is relevant. The Council have therefore not been unreasonable in applying SP2 to the appeal scheme.
5. Whilst I have disagreed with the Council's conclusions on the matter of the proposed garage being a replacement building, I have also explained in my other decision there is some logic to their argument and how they got there. Incorrect though I believe they are. This therefore comes down to disagreement on interpretation rather than being unreasonable.
6. Given my findings on the main issues of the case the applicant's third ground for costs is largely a moot point. That said, the applicant has sought in this case to somewhat sub divide the aims of the relevant development plan policy in regard to well designed new buildings. The wording of SP2 in this case is clear. It states that (in regard to what might be acceptable development in the countryside).....*well designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with SP13.* I see from this wording that the requirement for acceptable well designed new buildings should be so under the auspices of SP13 which, on my reading, relates to those buildings that bring sustainable economic growth through local employment opportunities, the expansion of businesses and enterprise. The inference here being it is development related to employment and not necessarily any other. I do not consider therefore that the Council have been unreasonable in interpreting the policy, and specifically the link between SP2 and SP13, the way they have.
7. The Council are clear that there would be no other planning harm arising out of the proposed development in physical impact terms. However, I feel they have been sufficiently detailed in their explanation as to where harm in respect of its principle would arise. They have set this out, addressed it under a relevant policy of the development plan and concluded accordingly.
8. On the Council's consistency, it would not be reasonable of me to require them to explain the conclusions they have reached on each development proposal for the erection of a garage/store building in the countryside. Being a largely rural district, it strikes me that there would have been more than a few in their history and I dare say that, probability dictates, their conclusions may have differed depending on the specific circumstances of the individual cases. It seems clear from the Council's evidence that their stance on whether a building represents a replacement or not has been recently affected by the findings of one of my colleagues, but it is not unusual for this to be the case. Ultimately, and as the decision maker in the case of the appeal scheme when it was a planning application, it is for the Council to decide what weight they apportion to the specific circumstances of the case before them. Which included my colleague's findings. Each development proposal accordingly being considered on its own merits and based on the information available at the time.
9. I do not see that the Council should have been taken to the so called tilted balance of paragraph 11 of the Framework in regard to their decision on the

² Selby District Core Strategy Local Plan 2013

appeal scheme. They have clearly identified the policies of the development plan relevant to the proposed development and as such they were not in a situation where there were no relevant development plan policies.

Consequently, and in regard to the evidence the Council have given, I do not agree that they have exercised their responsibilities incorrectly.

10. I note the applicant has referred to the process of ensuring a valid planning application which, in part, appears to stem from a disagreement between the parties on whether the proposed development was part of a residential curtilage or not and thus what fee was appropriate for the application. As frustrating and delaying though this process may have been, I fail to see that the Council ensuring they have all of the necessary information (including the correct fee) before them to determine the application is them behaving unreasonably.

Conclusion

11. For the reasons I have given, I do not consider that the Council have acted unreasonably and as such lead the applicant to incur unnecessary expense either during the life of the planning application or the submission of the subsequent appeal. A claim for costs is not therefore justified and is accordingly refused.

John Morrison

INSPECTOR