
Costs Decision

Site visit made on 2 March 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2021

**Costs application in relation to Appeal Ref: APP/A2335/W/20/3264905
Agricultural building in field no 0934 adjoining Bay Horse Road, Wellington
View Farm, Bay Horse Road, Ellel, Lancaster**

- 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 Russell Sanderson (DST Group) for a full award of costs against Lancaster City Council.
 - The appeal was against the refusal to grant approval required under a development order for the change of use of agricultural building to 3 dwellings.
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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.
3. The applicant contends that the Council acted unreasonably because they ignored commonly accepted norms established through casework and appeal decisions in relation to the acceptable boundaries of Class Q applications and the ability to impose planning conditions on those areas outside the application site but on other land owned by the applicant. More importantly it has also ignored the precedent for such matters previously accepted and established by Lancaster City Council in relation to earlier similar applications (both in relation to details outside the application site and the acceptability of Unilateral Undertakings for PAA applications).
4. This has resulted in significant additional and unnecessary research work having to be undertaken. Furthermore, that the Council did not seek to use a condition to address the concerns raised by reason for refusal 3 has resulted in the cost and expense of producing an unnecessary Unilateral Undertaking to support the appeal.
5. In response, the Council considers that the examples provided by the applicant have very limited relevance to the planning matter in question as part of the application for costs. The new access could not be secured by a condition and a planning appeal decision is referred to in this respect. A unilateral undertaking was not submitted at planning application stage.

6. Both parties have been able to provide previous prior notification decisions which support their respective cases to varying degrees. This illustrates the complexity of the arguments and interpretation of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) that arises from the circumstances pertaining to this particular appeal.
7. Whilst I have disagreed with the Council's interpretations regarding the use of conditions, their arguments have been clearly and concisely presented and they have been substantiated, both in the delegated report and in the appeal statement of case. With respect to the previous decisions relating to access, the circumstances of the appeal case appear to differ to the other examples that the applicant has provided, which for the most part refer to works to existing accesses and not new accesses. Overall, I find that the Council has not acted unreasonably.
8. Furthermore, in this context the research that was undertaken by the applicant was not a wasted expense, but an expense that was needed to counter the position that the Council had taken. The submission of a Unilateral Undertaking with the appeal was a choice that the applicant made and suggests at least some doubt in their mind that the appeal would find in their favour with respect to the use of a planning condition to secure the new access point. There was therefore not wasted expense resulting from the Council's actions either.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the application for costs fails.

Graham Wraight

INSPECTOR