



Costs Decision

Site visit made on 23 February 2021 by Darren Ellis MPlan

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 May 2021

Costs application in relation to Appeal Ref: APP/N4720/W/20/3262684 Land adjacent to Cockersdale Works, Whitehall Road, Drighlington, Bradford, BD11 1NQ

- 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 Matthew McHale for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for works to raise roof height and extension to agricultural building.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The application for costs, the Council's response, and the applicant's final comments were all received in writing and the respective cases will be familiar to the parties. Consequently, I shall not repeat the details in full and the following is a brief summary of the basis for the application and the Council's response.
5. The application is for a full award of costs. The applicant contends that the Council failed to interpret Green Belt policy correctly and was wrong to require him to demonstrate that the building was reasonably necessary for the purposes of agriculture, to demonstrate a need for the building, to justify its size or to demonstrate that very special circumstances were required for its construction. He also alleges that the Council's incorrect assessment of the need to demonstrate a requirement for the building led to errors in the way in which the Council considered the impact on openness and the visual impact of the proposal. Moreover, he submits that the Council should have been well aware of the correct way to assess such proposals, having regard to previous appeal examples, including cases within the Council's area.

6. Had the Council acted reasonably, it would have concluded that the proposal was in accordance with national and local planning policy and granted permission. The unreasonable actions of the Council have therefore led the applicant to incur unnecessary and wasted expense in the appeal proceedings.
7. The Council maintains that it was reasonable to consider whether the building was reasonably required for agricultural purposes having regard to appeal examples quoted. They maintain that the appellant did not provide evidence of how the building would be used or confirm that it would be for agricultural purposes. The existing buildings are dilapidated. Consequently, the Council was within its rights to conclude that the proposal was not for agricultural purposes. Given the absence of any clear evidence that the building would be used for agriculture the Council was correct to require very special circumstances to be demonstrated and to consider the impact on the openness of the Green Belt.
8. The Council did not ignore appeal decisions and included reference to three decisions within its appeal statement where Inspectors had considered whether agricultural buildings were reasonably necessary. Consequently, the Council did not behave unreasonably in determining the application and the costs incurred in submitting the appeal were not unreasonably incurred.
9. The PPG advises that a local planning authority is at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; for failure to produce evidence to substantiate each reason for refusal on appeal; or for vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
10. The appeal proposal is for an extension to an agricultural building in the Green Belt. The appellant stated on the application form that the building would be used for the storage of agricultural machinery and crops of hay. The proposed plans were similarly denoted and the design of the proposal was agricultural in its appearance. Thus, it seemed quite clear that the intended use related to agriculture. The Council have provided little evidence to the contrary, or set out why they consider that the building would not constitute an agricultural building. They did refer to the dilapidated condition of the existing building but that is not evidence that the proposal would not be used for the purposes set out by the applicant. Whilst the structure was dilapidated it appears to be of agricultural origins and is surrounded by agricultural land. There is no suggestion that the building has ever been put to a different use. Thus, from the information presented with the application it was clear that the intended use was for agriculture.
11. I accept that little further information was submitted in support of the application and the details provided were limited. Further information about the nature of the operations was submitted with the appeal. However, if the Council had concerns that the building was not intended for agricultural use, it could have sought further information from the applicant. There is no evidence that it sought to do so. Instead, without any further information, and contrary to the description on the application form the Council decided that the proposal was not for an agricultural building that would fall within the remit of paragraph 145(a) of the Framework.

12. Proposals under Schedule 2, Part 6, Classes A and B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), are required to demonstrate that a building in the Green Belt is reasonably necessary for the purposes of agriculture, however this relates solely to the consideration of whether a proposal would be permitted development. Such a test does not appear in local or national planning policy for development in the Green Belt, and therefore it should not be applied when considering the merits of a planning application seeking permission for an agricultural building in the Green Belt. The Framework and policy N33 of the UDP simply state that agricultural buildings are not inappropriate development. Providing the proposed use is for agriculture it is not incumbent upon the applicant to demonstrate that it is 'reasonably necessary'. The officer report recognises that the Framework does not impose such a test but suggests that the matter is a relevant concern with regard to the impact on the Green Belt. In my view it was unreasonable for the Council to impose an additional policy requirement/test that does not appear in local or national policy.
13. The Council has erroneously applied this test to the appeal proposal and their conclusion that the building would not be reasonably required is the basis behind the first reason for refusal, and leads to the conclusion that the proposal constitutes inappropriate development in the Green Belt and a subsequent assessment on the impact on openness, which both form the second reason for refusal.
14. I was referred to three previous appeal decisions which the Council claimed demonstrated the need and requirement for such a test, however for the reasons detailed in the appeal decision these previous cases were not comparable to the appeal scheme before me. The Dycotts Farm appeal was specifically in relation to a scheme submitted under Part 6 of the GPDO and the tests applied are fundamentally different. A specific local policy requirement applied to the appeal in Woking and the Barnet appeal was of a different nature, relating to horticulture. When read properly, none of the appeals provided justification for the Council's approach in this instance.
15. Had local and national policy been followed correctly and the test was not applied, then the proposal, as described in the application form, would have been found not to be inappropriate development in the Green Belt and the first two reasons for refusal would not have existed. Furthermore, a proposal that is not inappropriate development in the Green Belt would therefore be considered to be compatible with the Green Belt, and as a result part of the third reason for refusal would not have been necessary.
16. For those reasons, I find that the way in which the Council approached the question of whether the building would be inappropriate development within the Green Belt was unreasonable on the basis that there was no evidence to indicate that the proposed use of the building was not agricultural and that the Council applied a more stringent test that does not appear in relevant policy.
17. The third reason for refusal also has regard to the effect of the proposal on the character and appearance of the area. Even if any conflict with Green Belt policy had not been found, I consider it likely that the Council would have refused the application on the grounds that the proposal would cause harm character of the area. Notwithstanding my recommendation on the planning appeal, the Council, in its delegated report, clearly provided their reasoning as

to why the proposal would cause harm to the character of the area. Setting aside the issue of whether the proposal would be inappropriate development, it was not unreasonable for the Council to query the scale of the building in terms of its visual impact. Whilst I disagreed with their assessment in this case, issues around design are subjective and the Council was not unreasonable to make the conclusion that they did. It seems to me that in this matter there was a fundamental disagreement between the parties that could have only been resolved by appeal, and I can therefore find no unreasonable behaviour in this respect.

18. However, the failure to follow local and national policy and the incorrect application of a test to determine whether the extended building was reasonably necessary for the purposes of agriculture constitutes unreasonable behaviour. This has resulted in the appellant having to prepare an appeal submission where the rebuttal of the conflicts against Green Belt policy was unnecessary.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and I recommend that a partial award of costs is justified.

Appeals Planning Officer

Darren Ellis

Inspector's Decision

20. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis, agree with the recommendation and shall allow the application for an award of costs.

Costs Order

21. 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 Leeds City Council shall pay to Mr Matthew McHale, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the preparation of the appeal submission insofar as it relates to the interpretation of Green Belt policies; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Leeds City 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.

Chris Preston

INSPECTOR