



Costs Decision

Hearing Held on 26 April 2021

Site visit made on 27 April 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th May 2021

Costs application in relation to Appeal Ref: APP/P2365/W/20/3263153 Meadow Farm, Sandy Way, Holmeswood, Rufford, Lancashire L40 1UF

- 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 Richard Parker for a full award of costs against West Lancashire Borough Council.
 - The appeal was made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal.
3. Amongst other issues, the applicant expresses concerns in relation to the sole condition which is an agricultural occupancy condition (AOC) attached to planning permission Ref 8/6/1481 dated 10 October 1952.
4. The applicant suggests that the condition would not safeguard the human rights of the occupier of the dwelling and questions whether the condition, which states that 'The bungalow shall be occupied, together with the four acres of land comprised in the curtilage of the site, the subject of this permission, by a person engaged on working the said land as a smallholding' meets the requirements for a modern AOC.
5. The implication of the Costs Application is that the condition is unreasonable, and for this reason, fails to meet the conditions tests.
6. Section 73(2)(a) of the Town and Country Planning Act 1990 allows Local Planning Authorities to grant planning permission subject to conditions differing from those subject to which the previous planning permission was granted.

7. An assessment of the merits of the condition was made by the Council within its delegated report. The Council acknowledge at paragraph 8.15 that a condition may be considered unreasonable if it is unduly restrictive and in paragraph 8.16 acknowledge that the existing condition is restrictive. In paragraph 8.18, it is suggested there would be no objection to the AOC being revised to reflect that set out in the retained Appendix A (Model Conditions) of the otherwise cancelled Circular¹. This condition reflects that which I have seen it appropriate to impose in allowing the appeal.
8. I appreciate that the applicant was seeking to have the AOC at the site removed in its entirety as opposed to seeking a revised condition. I also noted at the Hearing that the Council were not aware of the occupation of the dwelling on the terms identified within the decision letter by Mr Parker Junior.
9. However, given the apparent acknowledgement of the Council that the original AOC could well be deemed unreasonable and would therefore fail the conditions tests, I cannot square the subsequent outcome of the application, on the basis of the Council's analysis of the condition. In refusing the application, the Council have effectively sanctioned the originally imposed condition, despite acknowledging its restrictive nature which could lead to it being considered unreasonable.
10. In taking this course of action, the Council have refused an application which should clearly have been permitted, albeit subject to a revised condition. This was unreasonable behaviour on the part of the Council. The appeal before me would have been avoided had the Council come to a different conclusion on the application, one which appears to have been identified as a potential outcome within the delegated report.

Conclusion

11. PPG makes it clear that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A full award of costs is subsequently justified.

Costs Order

12. 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 West Lancashire Borough Council shall pay to Mr Richard Parker the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to West Lancashire Borough 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.

T J Burnham

INSPECTOR

¹ Circular 11/95: Use of conditions in planning permission