
Costs Decision

Site visit made on 15 March 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th June 2021

Costs application in relation to Appeal Ref: APP/N4720/W/20/3265727 Valley Side Farm, Rakehill Road, Barwick-in-Elmet, Leeds LS15 4JJ

- 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 Verity-Talbot for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for construction of a purpose built agricultural building to provide housing for the applicant's cattle and to provide ancillary produce storage.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include acting contrary to, or not following, well-established case law. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant considers that the Council has acted contrary to and not followed well-established case law by refusing to grant planning permission for the proposed development on the grounds that 'by the virtue of its size' it would be inappropriate development in the Green Belt in spite of the fact that the proposal was for an agricultural building.
4. The established case law the applicant refers to is the Lee Valley judgement¹ which held that agricultural buildings are, in principle, not inappropriate development in the Green Belt, regardless of their size and location.
5. In their response the Council have stated that in their view the proposed building was not needed solely for the purposes of agriculture and that as a result, the proposal did not wholly meet the exception listed in paragraph 145 a) of the National Planning Policy Framework (the Framework).

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

6. However, the Council's officer report refers to the proposal being an 'agricultural building' with the decision notice describing the proposal as 'construction of agricultural building'. Furthermore, it is also stated in the officer report that the Council's Agricultural Surveyor concluded that on the basis of the information provided, there would be a requirement for a three-bay open fronted building on the appeal site for the housing of livestock, which according to Section 336 of the Town and Country Planning Act 1990, is classed as agriculture.
7. Therefore, even though the proposal would have five open fronted bays and be bigger than that suggested by the surveyor, this does not necessarily mean that it would not be an agricultural building. Indeed, three bays could be used for the housing of livestock with the other two being used for ancillary produce storage.
8. In any event, the reason for refusal states that '*the proposed agricultural storage building by virtue of its size, is not needed solely for the purposes of agriculture and is therefore inappropriate development and harmful to the Green Belt by definition*'. Accordingly, by using the proposed agricultural building's size as the reason for it being inappropriate development in the Green Belt, the Council have erred and failed to follow well-established case law and have therefore also acted contrary to it. Consequently, I find that the Council behaved unreasonably with respect to the substance of the matter under appeal.
9. Accordingly, in the overall planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the Guidance and the appellant has been faced with the unnecessary expense of lodging the appeal. As a result, I find the Council has behaved unreasonably by acting contrary to, or not following, well-established case law.
10. I therefore conclude that substantive unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

11. 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 Verity-Talbot, the full 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.
12. 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.

C Coyne

INSPECTOR