The Planning Inspectorate

Costs Decision

Site visit made on 15 June 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Costs application in relation to Appeal Ref: APP/A2335/W/20/3265749
New House Farm, Littledale Road, Littledale LA2 9EX

- 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 Stephen France for a full award of costs against Lancaster City Council.
- The appeal was against the refusal of to grant prior approval required under Article 3(1) and Schedule 2, Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 2015 for the for a portal frame cattle housing.

Decision

1. The application for costs is dismissed.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an 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. 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 basis for the claim is that the applicant considers that the Council refused prior approval for the agricultural building under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) because they considered that it fell outside of its provisions – a matter beyond the scope of a prior notification application.

4. As set out in my decision, the prior approval procedure for agricultural development as defined under Schedule 2, Part 6, Class A of the GPDO makes no provision for any determination to be made as to whether the proposal would be permitted development. However, the judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 sets out that 'on an application to an authority for a determination as to whether its "prior approval" is required, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development'.

5. This judgement directly conflicts with an earlier judgement in *R (oao Marshall) v East Dorset DC & Pitman* [2018] EWHC 226 (Admin), that was not cited in consideration of the later case. Accordingly, the two judgements coexist.

However, as a more recent judgement made in a higher court, until such a time the conflict is resolved, the *New World Payphones* judgement attracts greater weight and the Council was entitled to rely on its findings.

6. It follows that the Council's approach to refuse the application for prior notification on the grounds that the proposal fell outside of the scope of development permitted under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) was consistent with the judgement.

7. For the above reasons, I find the unreasonable behaviour has not been demonstrated, therefore an award of costs is not justified in the circumstances of the case.

R Hitchcock

INSPECTOR