



Costs Decision

Site visit made on 16 June 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Costs application in relation to Appeal Ref: APP/P2935/W/21/3271167 Townhead Farm, U7064 Wilmontswick Junction To Henshaw Junction, Tow House NE47 7EH

- 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 Neil Brigham for a full award of costs against Northumberland County Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for development described as "Barn conversion for holiday/hostel accommodation. Three new build elements, a long lean-to to the long barn to the North of the site for corridor access, a middle single storey link between the north and south of the site, and the replacement of the hay barn which cannot be re-used for a sports hall facility".
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Guidance further sets out that parties in planning appeals normally meet their own expenses. Additionally, the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Costs cannot be claimed for the period during the determination of the application, albeit behaviour and actions at the time of the application can be taken into account in the consideration of whether or not costs should be awarded.
4. In summary, the applicant claims that the pre-application advice given by the Council was misleading and omitted material factors which compromised the ability to address matters in the planning application.
5. Pre-application advice offered by Councils prior to the submission of a formal application is given on a without prejudice basis. It does not represent a formal decision of the Council or predetermine the outcome of the formal application. It can only reflect the nature of the proposal described, based on the information submitted at the time.
6. I have been provided with the Council's response to the pre-application enquiry, but not the details of the enquiry itself. From the available evidence, it

appears that the enquiry was not entirely the same as the appeal scheme and contained limited detail.

7. Patently the Council could not have provided advice on elements in the appeal scheme that were not part of the pre-application enquiry, such as the replacement hay barn. Nor could it have provided detailed advice on alterations to the roadside barn without detailed drawings. It did however make clear that the conversion should seek to maintain the character of the existing agricultural building and that any alterations should be undertaken in a sympathetic manner, utilising existing openings and keeping any new openings to a minimum. It will be seen from my appeal Decision that it was these detailed matters which led to the appeal being dismissed. Other matters such as ground gas protection, which I accept were not raised at pre-application stage, were not critical to my Decision.
8. Furthermore, the evidence before me indicates that the applicant was advised of the Council's position during the application process. This allowed the applicant to make an informed decision on whether to seek to address the Council's concerns. The appeal against non-determination was the applicant's choice and thus the appeal costs from that point onwards were self borne.
9. In reaching my conclusion, I have had regard to the costs decision highlighted by the applicant where the Inspector in that case accepted that the Council's pre-application advice had been misleading, justifying an award of costs. However, for the reasons given above, I am satisfied that the cases are not comparable. Also, as I have dismissed the appeal, the Council's concerns were ultimately substantiated.
10. As such, although the applicant incurred expense in lodging the appeal, this was not borne out of unreasonable behaviour by the Council and was not therefore unnecessary or wasted.

Conclusion

11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated, and therefore an award of costs is not justified.

A Caines

INSPECTOR