

Costs Decisions

Site visit made on 25 May 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Costs Application A: In relation to Appeal Ref: APP/F2415/C/20/3266005 Land South West of Gumley Road, Laughton, Leicester

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Tate for a full award of costs against Harborough District Council.
 - The appeal was against an enforcement notice alleging, without planning permission, the erection of two kilns and associated fixtures and fittings on the Land.
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Costs Application B: In relation to Appeal Ref: APP/F2415/W/20/3266004 Land South West of Gumley Road, Laughton, Leicester

- 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 James Tate for a full award of costs against Harborough District Council.
 - The appeal was against the refusal of planning permission for installation of external kiln driers in association with existing wood yard.
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Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Reasons

3. National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The appellant submits that the Council failed to carry out adequate prior investigation that justified enforcement action and failed to substantiate its reasons for refusing the planning application with evidence on appeal. In addition, they refused planning permission on a planning ground capable of being dealt with by conditions.
5. PPG advises that a local planning authority might be at risk of an award of costs on procedural matters in an enforcement appeal, if they do not carry out adequate prior investigation and it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.¹

¹ Paragraph: 048 reference ID 16-048-20140306

6. In addition, PPG advises that a local planning authority may be at risk of an award of costs with respect to the substance of the matters under appeal, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples include, failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.²
7. The biomass boilers were constructed in 2017 and the enforcement notice issued in December 2020. There does not appear to be any dispute between the parties that throughout that period the local planning authority carried out a number of investigations and monitored emissions from the unauthorised boilers in response to complaints from local residents relating to the effect on their living conditions. The decision to issue an enforcement notice was made after full consideration of a retrospective planning application for the development. The reasons for serving the notice were set out clearly in the enforcement notice, and the breach was accurately recorded. From the evidence before me, I am satisfied that procedurally the local planning authority acted reasonably in relation to enforcement matters in Appeal A.
8. With regard to Appeal B, I have noted the recommendation of the Council's Officer and also the statutory consultation responses. However, the decision is one of a matter of judgement and the Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made by them for the contrary view.
9. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of Harborough Local Plan that the proposal would conflict with.
10. Moreover, the Council did further support their reason for refusal with a statement which provided a description of the site and surrounding area and relevant planning history. The statement also identified the harm they considered the development would have to nearby residents if granted planning permission, supported by the considerable number of objections and photographic evidence they had received from residents since the boilers were installed. The Council identified which policies in the Development Plan the development would conflict with.
11. It will be seen by my decision that I did not agree with the Council's decision to refuse the application and found that any potential harm could be mitigated by conditions. However, that decision was a matter of professional judgement, and I am satisfied, for the reasons set out above, that the Council adequately substantiated its reason for refusal and the appeal could not have been avoided.
12. I therefore conclude unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated in either Application A or Application B, and an award of costs is therefore not justified in either case.

Elizabeth Pleasant

² Paragraph: 049 Reference ID: 16-049-20140306

INSPECTOR