
Costs Decision

Site visit made on 15 June 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2021

Costs application in relation to Appeal Ref: APP/M1005/W/21/3269825 Bonnie View, 91 Old Road, Heage, Belper, Derbyshire DE56 2BN

- 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 David Killingworth for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of an agricultural building for the storage of tools, machinery, animal feeds and agricultural materials.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. It advises that local planning authorities (LPAs) are at risk of an award of costs for vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis and for preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
3. An LPA is not duty bound to follow the advice of its professional officers. However, if a different decision is reached, the LPA must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to support that reasoning.
4. The Council officer's report considers the effect of the proposed development on its surroundings, including with reference to the uses of the site, the size and appearance of the building and the screening that would be provided by the land and trees around the site. Having done so, the officer's report concludes that the building would be appropriately designed for the stated agricultural purpose and would be in accordance with development plan and national policies relating to design and character.
5. The Council has provided a copy of the minutes from the Planning Board meeting at which the application was determined. However, those minutes do not provide any detail of the specific matters which were discussed. They solely state the reason that the Council resolved to refuse the application, which is the same as that given on its decision notice. Nor has the Council submitted an appeal statement. I therefore have nothing before me from the Council to

- demonstrate why it took a different view to its officers in concluding that the development would cause harm to character or appearance or conflict with the policies cited in its reason for refusal.
6. The Council's reason for refusal echoes the wording of the policies cited therein and states that the development would not achieve what those policies require. However, the Council has not provided any detail as to what aspect(s) of the character of the locality it considered the development would have a significant adverse effect upon or what aspect(s) of the character, local distinctiveness and quality of the area's landscape the development would not have regard to with reference to the specific site and its surroundings in this case. Nor has the Council given any information as to what aspect(s) of the proposed development it considered would give rise to the significant adverse impacts on that character that it has identified.
 7. Therefore, although character and appearance can be matters of planning judgement it is not clear how, in the Council's judgement, it concluded that the specific development proposed in this case would be harmful with reference to the character or appearance of this particular site. The Council has relied on vague and generalised assertions about the impact of the proposal which are not supported by any objective analysis based on the site and the development proposed in this case. It has thus failed to substantiate its reason for refusal.
 8. The Council has referred to an appeal decision in which the Inspector found one of the policies cited in its reason for refusal in this case to be out of date. However, based on the Planning Board minutes provided and in the absence of an appeal statement from the Council, it is not clear what bearing that previous appeal decision had on its decision to refuse permission in this case.
 9. As will be seen from my appeal decision, having considered the proposal in the light of relevant local and national policies and from my own observations, I find the development to be acceptable and that it should have been permitted. The Council has failed to substantiate its reason for refusal at appeal and this does amount to unreasonable behaviour as described in the PPG.
 10. As a result of the Council's unreasonable behaviour, the appellant has incurred unnecessary and wasted expense as a result of having to prepare and submit an appeal. I therefore find that a full 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 Amber Valley Borough Council shall pay to Mr David Killingworth 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.
12. The applicant is now invited to submit to Amber Valley 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.

Jillian Rann
INSPECTOR