



Costs Decision

Site visit made on 16 August 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2021

Costs application in relation to Appeal Ref: APP/E2734/W/21/3274201 Land Part of Hollins Farm, Weeton Lane, Weeton, Leeds, LS17 0BG

- 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 Hawksworth Estates for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of prior approval for erection of agricultural storage building.
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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 costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Council has behaved unreasonably on a number of grounds.
4. First, that its first reason for refusal was based on an incorrect supposition that permitted development rights do not apply unless an application has demonstrated a requirement for the proposed building. The appellant refers to a High Court judgment¹ in respect of a previous appeal on a nearby site where it was concluded that the Council “when deciding a prior approval... is not empowered, either expressly or implicitly, to decide whether or not the proposed development comes within the description of the relevant class of the GPDO²”.
5. However, that judgment pre-dates later judgments on this issue, namely *New World Payphones*³ and recently *Smolas*⁴. The latter in particular held that a Local Planning Authority in that case did not act unlawfully in determining that the proposed development would fall outside of the scope of Part 6, Class A. Whilst *Smolas* had not been issued at the time of the Council’s consideration of

¹ Harrogate Borough Council v Secretary of State for Housing Communities and Local Government and John Ogden, 30 October 2019

² Town and Country Planning (General Permitted Development)(England) Order 2015

³ New World Payphones Ltd v Westminster City Council [2019] EWCA Civ 2250

⁴ Paul Smolas v Herefordshire Council [2021] EWHC 1663 (Admin)

the proposal, in my Appeal Decision I have concluded that the findings in *New World Payphones* refer to the GPDO generally and not one particular class.

6. On that basis, the Council did not behave unreasonably in reaching its conclusion on whether the proposal fell within the scope of the permitted development right.
7. Second, that in its second reason for refusal the Council assessed the proposal against incorrect planning policy and information.
8. The appellant considers that the Council applied the Green Belt policies. However, whilst the site is within the Green Belt, the Council Officer's report concludes that the proposal would not constitute inappropriate development. Green Belt Policies are also not referred to in the reasons for refusal. Whilst the report considers that the building would encroach into the open countryside, this is set out in general terms rather than specifically in relation to the Green Belt. The Council's consideration of policy on this matter was therefore appropriate.
9. There is some disagreement as to the consideration of the floor area of the proposal. However, this is a minor matter in respect of my consideration of this appeal and is not a determinative issue.
10. The appellant contends that the Council's statement that the building would be prominently sited is untrue. However, I have agreed with the Council on that matter and therefore cannot conclude that it has behaved unreasonably.
11. It is clear from the Officer's report that matters of design, siting and external appearance were considered. Indeed, I have agreed with the Council on the matter of the height and siting of the proposal.
12. Whilst there are some isolated agricultural buildings in the wider area, I have concluded that they do not reflect the prominent location of the appeal site or set a prevailing context. The Council's consideration of this matter was therefore not unreasonable.
13. In respect of the approval granted on appeal in 2019⁵, this is referred to in the relevant site history of the Officer's report. The conclusions of the Inspector in that appeal also do not reflect the later judgments in *New World Payphones* and more recently *Smolas*. Even if the Council had considered this previous appeal decision in more detail, it would not have justified a different assessment in respect of the application and whether it represented permitted development. Moreover, consideration of the previous approval has also not led me to a different conclusion in respect of the merits of the appeal before me, and the Council's considerations have therefore not led to an appeal which could otherwise have been avoided.
14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

David Cross INSPECTOR

⁵ Appeal Ref: APP/E2734/W/19/3226250