



Costs Decision

Site visit made on 17 August 2021

by Samuel Watson BA(Hons) MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Costs application in relation to Appeal Ref: APP/L3245/W/21/3269754 Sutton Farm, Claverley, Wolverhampton WV5 7DD

- 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 & Mrs R & C Kempsey for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for a Class Q application for the change of use of an agricultural building to five dwellinghouses.
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Decision

1. A partial award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) makes it clear that parties in planning appeals normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The applicant submits that the Council's reasons for refusal were vague and not substantiated by evidence, and that one reason for refusal could have been dealt with by way of a condition. They also raise that the Council introduced a new issue during the appeal, and that they have not worked with the applicant in a positive or proactive manner. The applicant considers that these matters resulted in wasted expense in having to form a response.
4. The planning application was refused on two grounds, namely that the operational development went beyond the scope of the provisions of Class Q, and that the location was impractical or otherwise undesirable for the proposed development. Both of these reasons are matters of planning judgement and in this case, I am satisfied that the Council substantiated its concerns within its Development Management Report. This included detailing the existing conditions of the appeal building, the site and its surroundings, the scale of the proposed works, and highlighting issues which it considered would compromise living conditions. The Council also made reference to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Likewise, the Council substantiated, through their evidence, the reasons why the condition and Unilateral Undertaking (UU) put forward by the applicant, to protect living conditions, were not accepted. Whilst I found differently to the Council on its two reasons for refusal, I am satisfied that it acted in a reasonable manner in regard to the above matters during the

appeal process. Therefore, I find that the work undertaken by the applicant, involved in defending the two reasons for refusal and including putting forward the condition and undertaking, were necessary and therefore not a wasted expense. Indeed, the applicant had a right to appeal the decision, and doing so was their own individual choice.

5. I have not been provided with any substantive evidence to show that the Council communicated with the applicant during the planning application process or during the subsequent appeal. I note that the applicant attempted to initiate contact with regards to the proposed UU but that no response was forthcoming. From the evidence before me I find it likely that the Council did not properly communicate with the applicant. However, although this would have been unhelpful, it would not automatically mean they were unreasonable. Further, it has not been demonstrated that this resulted in any wasted expense.
6. Nevertheless, it is clear that the Council introduced a new issue during the appeal process which was tantamount to a further reason for refusal. The issue, whether the host building was lawful, was not referred to within the Council's Development Management Report or decision notice but was clearly a central issue raised in their later statement. The applicant would have therefore had to undertake further work during the appeal process to defend this matter. As a result, I find that the Council acted unreasonably in raising a new issue at this time, and that it resulted in wasted expense for the applicant.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. 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 the Council shall pay to the applicant the costs of the appeal proceedings described in the heading of this award, limited to those incurred in dealing with the additional issue raised regarding the lawfulness of the appeal building; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council, to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

Samuel Watson

INSPECTOR