

Costs Decisions

Site visit made on 14 October 2021

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Costs application in relation to Appeal A: Ref: APP/G5180/W/20/3256137 Sky Farm, Land at New Years Lane, Knockholt TN14 7PQ

- 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 Samuel Harii for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of the Council to grant prior approval for the siting, design and external appearance of an agricultural barn under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - This decision supersedes that issued on 4 March 2021, which was quashed by order of the High Court.
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Costs application in relation to Appeal B: Ref: APP/G5180/W/20/3259004 Sky Farm, Land at New Years Lane, Knockholt TN14 7PQ

- 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 Samuel Harii for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of the Council to grant prior approval for the siting, design and external appearance of an agricultural barn under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - This decision supersedes that issued on 4 March 2021, which was quashed by order of the High Court.
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Decisions

1. The applications for awards of costs in relation to both appeals are refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
3. The applicant alleges that the Council behaved unreasonably during the determination of both applications for a number of reasons. These include preventing or delaying development which should clearly be permitted, failing to substantiate reasons for refusal, failing to make decisions within the strict timetable, making vague, generalised or inaccurate assertions about the impact of the proposals, refusing developments on planning grounds capable of being dealt with by conditions, not determining cases in a consistent manner and

failing to act in a helpful manner which could have resulted in the appeals being avoided or the issues being narrowed.

4. The High Court found that the Council had notified the applicant of its decision that prior approval would be required for both applications within the statutory period. It therefore did not act unreasonably in terms of meeting the strict determination timetables of Class A. This key matter, which was fundamental to the outcome of the previous appeals and associated cost decisions, has been settled.
5. In addition, although the Council's evidence does not particularly engage with the conditions and limitations at Paragraph A of Class A, its reasons for refusal concern prior approval matters at condition A.2.(2)(i) of this Class. The Council does provide objective analysis showing why it considered that prior approval should not be given for such matters. Whilst its reasons were less well justified for the siting of the building under Appeal B, they were not unclear or erroneous. Indeed, I share its concerns in relation to the siting of the building under Appeal A.
6. Taking all of the above into account, I find that the Council did appropriately substantiate its reasons for refusal for both applications. Furthermore, it did not prevent or delay development which should clearly be permitted.
7. As set out in my appeal decisions, it would not be appropriate to secure additional ecological surveys or mitigation via condition to overcome harm arising from the siting of the building under Appeal A. I am not persuaded that the Council refused developments on planning grounds capable of being dealt with by conditions.
8. My attention has been drawn to other agricultural developments at surrounding farms. However, I do not know the exact size of these agricultural units or the nature and scale of their associated agricultural trades or businesses. Consequently, I cannot be certain that these developments are directly comparable to that proposed under these applications, which I have assessed on their own individual merits and in the light of relevant legislation in any event. I am therefore not persuaded that the Council has failed to determine these applications in a consistent manner, or contrary to established case law.
9. I sympathise with the applicant, who did not appear to receive feedback from the Council during its determination of the applications. However, it does not appear that it was deliberately obstructive during this period. Moreover, it was open to the applicant to request formal pre-application advice from the Council prior to submission. In any event, given the nature of the Council's concerns, I cannot be certain that a more helpful approach would have resulted in the appeals being avoided.

Conclusion

10. Taking everything together, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in both cases and that an award of costs is not justified for either Appeal A or Appeal B.

M Heron

INSPECTOR