
Costs Decision

Site visit made on 1 February 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 February 2022

Costs application in relation to Appeal Ref: APP/E2734/W/21/3285762 Healthwaite Hall, Green Lane, Weeton, Leeds LS17 0BQ

- 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 and Mrs A Adcock for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of planning permission for the construction of agricultural storage building.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) 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. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. In this instance the applicants are seeking, on substantive grounds, a full award of costs against the Council on the grounds that the Council unreasonably prevented or delayed development which should be permitted having regard to its accordance with the development plan, national planning policy and other material considerations. In addition, it is argued, the Council failed to produce evidence to substantiate each reason for refusal and that which was submitted was vague, generalised or inaccurate and unsupported by any objective analysis.
4. Although only a single reason for refusal is set out in the Council's Decision notice, the appellants helpfully and accurately summarise its extent, identifying three elements; the first two elements relating to Green Belt matters¹, the final element to matters of character and appearance. The applicants' appeal submission responds to each in turn.
5. However, the Council acknowledge, somewhat belatedly once the appeal had been submitted, that the Green Belt elements of the reason for refusal were

¹ The wording taken from the Decision Notice being: '*It has not been demonstrated that the proposal is reasonably necessary for the purposes of agriculture and the unit, on the balance of probability. The proposal would result in a significant loss of open land and affect the spatial openness of the Green Belt. The proposed building therefore constitutes inappropriate development in the Green Belt.*'

not supported by the detailed officer report. Indeed, whilst the officer report clearly concluded at section 1 that the proposed building would fall within the scope of the exception provided by Framework paragraph 149(c) and was therefore not inappropriate development, the reason for refusal nevertheless stated the contrary.

6. I accept that the Council subsequently clarified this point in their 'Comments on Appellants' Statement', but by this point the applicant had prepared and submitted this appeal and had sought to address the stated refusal reason in its entirety. I accept too, that the Council's oversight in this respect was likely to have been a genuine error. Nevertheless, however it occurred, this amounts to unreasonable behaviour on the Council's part that has clearly led the applicants to incur to unnecessary or wasted expense in the preparation of their case with regard to these aspects of the refusal reason.
7. With regard to matters of character and appearance, the officer report is short and to the point. However, this is not a criticism and does not indicate unreasonable behaviour through the adoption of vague, generalised or unsubstantiated assertions. Assessments of the impact of a proposed development upon character and appearance will, almost inevitably, be subjective in nature. I am satisfied that the Council's officer report and 'Comments on the Appellants' Statement' together set out the Council's case briefly but with sufficient justification. In this respect, the Council have not acted unreasonably and so it cannot be the case that unnecessary or wasted expense has been incurred by the appellants.

Conclusion

8. For the reasons I have set out, I conclude that the Council acted unreasonably in respect of the first two elements of the reason for refusal as set out on the formal Decision Notice which led to the applicants incurring unnecessary and wasted expense. However, I am satisfied that they did not do so in respect of the final element. It cannot therefore be the case that the application for a full award of costs succeeds, but a partial award of costs, to cover the expense incurred by the applicants in contesting the first two elements of the reason for refusal, identified as relating to Green Belt matters¹, is justified.

Costs Order

9. 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 Harrogate Borough Council shall pay to Mr and Mrs A Adcock, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to contesting the first two parts of the Council's reason for refusal, concerning Green Belt matters¹.
10. The applicant is now invited to submit to the Harrogate 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G Robbie

INSPECTOR