



Costs Decision

Site visit made on 5 January 2022

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 16th February 2022

Costs application in relation to Appeal Ref: APP/C1625/X/21/3282040 Land at Barton End, Horsley, Nailsworth GL6 0QQ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Joy Main for a full award of costs against Stroud District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for The use of the land as agricultural land, as defined in Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
-

Decision

1. The application for an award of costs is refused

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. In brief, the case made by the Appellant relates to the conduct of the Council at the stage that her application was being determined and how this led to a flawed decision being made. She says that the Council refused to discuss the case with her and no contact details for the Case Officer were given at the outset. This led to a failure of the Council to engage and allow her to explain her position.
4. This was particularly the case with regards to third party submissions. She says that in correspondence the Council said that it would be giving little weight to photographs submitted by third parties, yet they were shown to be influential in its decision-making, as they form the basis of refusal reason 5. She says that she was given no chance to comment on the photographs, which was contrary to the PPG¹. Had she been able to comment, the appeal could have been avoided. Therefore, this was unreasonable behaviour that led to unnecessary and wasted expense.
5. Although it is not specified in the costs application, its terms lead me to find that the Appellant seeks a full award and I am proceeding on this basis.

¹ Paragraph: 006 Reference ID: 17c-006-20140306

6. For its part, the Council opens by citing the advice from the PPG that I have paraphrased in my paragraph 2, above. It sets out that it was for the Applicant, as the Appellant was then, to make her case by submitting sufficient information. However, it agrees that information received from third parties should be shared with applicants. It states that this was the case, save for the photographs accompanying one of the online comments. They were forwarded to the Applicant, but the decision was made before any response could be given. It says that the decision it made was not based on these photographs and concludes by saying that it rejects any claim of unreasonable behaviour.
7. The start point for an assessment of an application for an award of costs is described as follows in the PPG: "Parties in planning appeals and other planning proceedings normally meet their own expenses" . It goes on to say that a successful award of costs is reliant on a party acting unreasonably, and that this led to unnecessary expense.
8. I understand the Appellant's frustration at a lack of Case Officer contact details and the difficulties this caused in discussing the case with the Council. The evidence shows that initially the Applicant had to contact the Officer through the Council's switchboard. Whilst undoubtedly frustrating and time consuming it did appear to work, at least to a degree, as there is evidence of subsequent email correspondence between the parties. On this matter, the Council's actions – whilst there might be good reason for them – was clearly unhelpful. However, I find that it was not unreasonable behaviour.
9. The Council is correct to say that the onus to prove her case lay with the Applicant. However, the PPG makes it clear that any evidence that it received should be shared with an applicant. Although the Council shared all of the photographic evidence it failed to give the Applicant an opportunity to provide counter-evidence on some of this. This was unreasonable behaviour. The question that follows from this is did this result in unnecessary or wasted expense?
10. Although the Council say that it gave the photographs limited weight, they did without doubt form part of the reasoning for refusal. However, the reason makes it clear that they were part of the overall third-party evidence, which included comments made by the parish council. The reason did not rely solely on those photographs.
11. Had the Applicant been given an opportunity to comment on the photographs I do not find it at all likely that the appeal would have been avoided. The Council would still have been most likely to find that the evidence as a whole cast sufficient doubt on what was sought in the certificate. Thus, the Council's actions did not lead to unnecessary or wasted expense.
12. Although I have found that the Council's approach in terms of what might be termed 'customer care' at the application stage was unreasonable, for the reasons given above this did not lead to unnecessary or wasted expense.
13. For the above reasons, the claim for costs fails.

Roy Curnow

Inspector