

Costs Decisions

Site visit made on 1 February 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Costs A

Costs application in relation to Appeal Ref: APP/N4720/W/21/3282622 The Ferns, Tithe Barn Lane, Bardsey, Leeds LS17 9DX

- 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 J Broadbent for a full award of costs against Leeds City Council.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for the erection of a building for agriculture.
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Costs B

Costs application in relation to Appeal Ref: APP/N4720/W/21/3282622 The Ferns, Tithe Barn Lane, Bardsey, Leeds LS17 9DX

- 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 Leeds City Council for a full award of costs against Mr and Mrs J Broadbent.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for the erection of a building for agriculture.
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Decisions

Costs A – application by Mr and J Mrs Broadbent

1. The application for an award of costs is refused.

Costs B – application by Leeds City Council

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

Reasons

3. 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 and / or an appellant could be vulnerable to an award of costs against it.

Costs A

4. The appellants state that the appeal was only required as a result of the Council's unreasonable conduct in refusing to grant planning permission [*sic*] and thus that the Council had prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. It is stated that the Council determined the application as if it were an application for planning permission, rather than against the provisions and requirements of Schedule 2, Class A of Part 6 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order). Yet, the Council's delegation report clearly sets out the relevant provisions of the Order at the outset of the Appraisal section. The appraisal then considers the proposal against the relevant parts of the Order, particularly paragraph A. of Class A of Part 6, but also then against the provisions, limitations and restrictions set out at paragraph A.1.(a) to (k) and the conditions set out at paragraph A.2(1), (2) and (3).
6. The conclusion reached, which I share, is that the proposal does not amount to permitted development under Class A of Part 6. It is not clearly explained by the appellants exactly what is meant when it is stated that the Council determined the application as if an application for planning permission. However, I am satisfied that the officer report and the Council's subsequent appeal submissions clearly explain the basis for their approach and there is nothing unreasonable in this approach. The judgements¹ and previous appeal case² referred to by the appellants have been overtaken by a judgement from a higher authority³ and by another made more recently⁴ which draws upon that of former. As such, it was not incorrect or unreasonable for the Council to take the approach that they did.
7. With regard to the advice of the Council's agricultural consultant, it is clear that it was sought, and provided, on the basis of non-statutory advice. Whilst I do not wholly agree with the conclusions drawn by the Council from that advice, the officer report and appeal submissions nevertheless clearly set out the Council's formal case.
8. The tone of the appeal submissions of both parties seem to me to be unnecessarily robust, but the on-going working relationship between the appellant (and the appellant's agent) and the Council is a matter for the parties to resolve. It is not a material matter in relation to either the appeal or the application for an award of costs and does not therefore amount to unreasonable behaviour resulting in unnecessary expense.

Costs B

9. The Council's application for an award of costs is made on both substantive and procedural grounds. The Guidance provides examples of behaviour which may give rise to an award of costs on either ground when instigated by either main party. Acting contrary to, or not following, well-established case law is cited as

¹ Keenan v Working BC & SSCLG [2017] EWCA Civ 438 and R (Marshall) v East Dorset DC & Pitman [2018] EWHC 226 (Admin)

² APP/N4720/W/19/3221705

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

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

an example when a local planning authority may be at risk of an award of costs against it on substantive ground. As the list of examples is clearly qualified as not being exhaustive, I see no reason why this should not apply as equally to appellants as to local planning authorities.

10. The appellants' insistence on relying upon older case law than that cited by the Council may not have been solely responsible for the appeal. Correspondence or contact between the parties may also have identified the divergent opinions on this area of case law and have avoided an appeal, but I am not persuaded that it was by any means certain that remedy in either respect would have avoided the appeal.
11. Nevertheless, the appellants' reluctance to accept more recent judgements, including one from a higher authority, than the examples relied upon, or at the very least to provide a robust response thereto, amounts to unreasonable behaviour and, as such, the Council has incurred unnecessary expense in preparing its case.
12. The principle that appeals should not be used to evolve a scheme is well-established. I acknowledge that the appellant's rebuttal to the Council's application for an award of costs does include reference to a later application⁵ and includes information and details relating thereto. It also appears on the evidence before me, that there is at least a degree of overlap between the dates of correspondence and evidence submitted with the late representations in support of the appeal and the Council's determination date of the appeal application.
13. However, it is also clear that the appellants' case has evolved throughout the appeal process, as evidenced by the progress of content and argument from appellant's initial Grounds of Appeal and application for an award of costs through to final comments and costs rebuttal stages, respectively. Whilst the timing of some of the documents predates the Council's decision on the application, and there remains some dispute between the main parties as to their exact status, the Council have been able to address these in their submissions on the planning matters. However, they have done so at an equally late stage in the process which, had the Council not been presented with that evidence, there would not have been a need to do so. This amounts to unreasonable behaviour on the part of the appellant for which the Council has incurred unnecessary expense.

Conclusion

14. For the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated in respect of Costs A. An award of costs is therefore not justified in respect of Costs A. With regard to Costs B, the appellant's submission does not follow recent but well-established case law and has evolved throughout the appeal. In respect of Costs B therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated and that an award of costs is justified.

⁵ LPA Ref No: 21/06968/FU

Costs Order in relation to Costs B

15. 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 Mr and Mrs J Broadbent shall pay to Leeds City Council, the costs of the appeal proceedings in relation to the disputed condition described in the heading of this decision.
16. The applicant is now invited to submit to Mr and Mrs J Broadbent, 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