



Costs Decision

Site visit made on 19 January 2022

by Paul Martinson BA (Hons) MSc MRTPI

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

Decision date: 22 March 2022

Costs application in relation to Appeal Ref: APP/B2355/W/21/3284053 Reddish Hill Farm, Market Street, Shawforth, Whitworth OL12 8XD

- 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 Heathcliffe Howard for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for change of use and associated operational development of agricultural buildings to form 2 'larger' dwellinghouses.
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Decision

1. The application for a full award of costs is refused. However, a partial award of costs is granted in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.
3. Paragraph 49 of the PPG makes clear that local planning authorities are at risk of a substantive award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or if they act contrary to, or do not follow, well-established case law.
4. The Council's first reason for refusal was that the proposed change of use was undesirable due to the lack of basic private outdoor amenity space, resulting in a poor standard of amenity for the occupants. I acknowledge that the level of outside space proposed was modest, but that there was some. I also accept that the GPDO specifically restricts the maximum size of curtilage that can form part of the prior approval, which limits the amount of outdoor space that can be provided.
5. However there comes a point where outside space is so limited that, in my view, it becomes a legitimate matter to consider in terms of whether a scheme would be 'undesirable' within the terms of the GPDO and PPG. I note that the Framework, for example, speaks of ensuring a 'high standard of amenity for existing and future users'. Whilst I accept that outside space provision does not fall within the examples of potentially undesirable circumstances given in the

PPG¹, nevertheless the PPG also clarifies that undesirable means 'harmful or objectionable'. In that context the Council has not acted unreasonable in objecting to the scheme on the basis that they considered it would be harmful to the living conditions of future occupants and thus undesirable, notwithstanding that I took a different view.

6. The second reason for refusal was based around the parking area not being included within the curtilage that formed part of the application for prior approval. Being shown outside of the curtilage on a proposed plan, this did not form part of the application and thus the Council considered that the proposal did not comply with its standards for parking. As reasoned in my decision, the GPDO does not include a requirement to provide parking or to use a part of any proposed curtilage as such. In this regard I cannot therefore conclude other than that the Council acted unreasonably. Its opposition to the development, was not based on a clear and logical interpretation of the provisions of the GPDO.

Conclusion

7. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified, relating solely to the Council's second reason for refusal in respect of parking provision, which is not a requirement of the GPDO. The applicant has thus been faced with the unnecessary expense in responding to this matter at appeal. Whilst the appellant has not precisely enumerated the expense incurred in that regard, the PPG explains how costs may include 'the time spent by appellant and their representatives' at appeal. Thus, no doubt some costs have arisen.

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 Rossendale Borough Council shall pay to Mr Heathcliffe Howard, the costs of the appeal proceedings described in the header of this decision limited to those costs incurred in responding to the Council's second reason for refusal with regard to parking provision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Rossendale 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.

¹ Reference ID: 13-109-20150305