

Costs Decision

Hearing Held on 15 February 2022

Site visit made on 16 February 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2022

Costs application in relation to Appeal Ref: APP/Z2315/W/21/3273409 Land at Long Causeway, Cliviger, Burnley BB10 4RP

- 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 Robert Banham for a partial award of costs against Burnley Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for an agricultural building.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

The submissions for Mr Robert Banham

2. The partial award of costs is sought in respect of the Council's second ground of refusal, which is concerned with the engineered land changes that have formed a plateau which the proposed agricultural building would stand on.
3. The ground of refusal is vague but states that insufficient evidence has been produced regarding the engineered land changes for the Council to make a sound judgement. The Council has not produced evidence of this work or why it considers it to be development requiring an express grant of planning permission, neither has it taken enforcement action against it.
4. The application was for an agricultural building and not for any changes to land levels unless shown on the submitted plans. The existing and proposed land levels on those plans are shown to be the same and could have been checked as part of the Council's site visit. It was therefore unreasonable for the Council to conclude that it had insufficient evidence.

The response by Burnley Borough Council

5. It had been clearly identified in correspondence that the engineered land changes were development requiring an express grant of planning permission and that they should have been included in the planning application. The ground of refusal was correct and sound in reiterating this.
6. The description of the proposed development in the application form referred to the erection of an agricultural building but did not refer to the engineered land changes. No details of the previous land levels were included.

Reasons

7. The Planning Practice Guidance (the PPG) advises that costs may be awarded if a party has behaved unreasonably, and so has directly caused another party to incur unnecessary or wasted expense in the appeal process.
8. While the Council may hold genuine concerns about the engineered land changes and may yet decide to take enforcement action as a result, they were, as it has indicated, not part of the planning application. Accordingly, it was not reasonable for the engineered land changes to form the basis of a ground of refusal of the separate development comprising the agricultural building.

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 Burnley Borough Council shall pay to Mr Robert Banham the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second ground of refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Burnley 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.

Mark Harbottle

INSPECTOR