
Costs Decision

Site visit made on 31 March 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Costs application in relation to Appeal Ref: APP/G5180/W/21/3279783 Land East of Lillys Wood, Skibbs Lane, Orpington, Kent BR6 7RH

- 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 Melvyn Jackson for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of an application for prior approval of details for the siting and appearance of an agricultural storage building.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. The applicant is seeking a full award of costs on the basis that the Council behaved unreasonably by refusing the prior approval application the subject of this appeal. It is made on procedural grounds in relation to a claimed lack of engagement with the appellant, and on substantive grounds in relation to 'preventing or delaying development which should clearly be permitted' and by making 'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis'¹.
4. The Council has not responded to the claim.
5. In refusing the appeal proposal the Council maintained reasoning applied to the dismissal of the previous appeal for an agricultural building in relation to its impact on a Site of Importance for Nature Conservation (SINC) although the building would now be sited outside land so designated. However, it is a matter of planning judgement if the same reasoning would still apply to the new siting. Whilst I have allowed the main appeal, I do not consider that the Council has necessarily acted unreasonably in coming to a different view.
6. Firstly, the dismissed scheme was for a building sited on cleared open ground, not within the woodland primarily comprising the SINC designation, but was judged to be too close to that woodland. The current proposal is also for the building to be sited on cleared open ground not far from the same woodland.

¹ Planning Practice Guidance Paragraph: 049 Reference ID: 16-049-20140306

7. Secondly, the site plan submitted with the proposal is vague about the precise siting of the building with no cross reference to show how this differs from the previous submission and no figured dimensions to indicate how far the building would be sited from the woodland to the north, east and west. Assessment on whether the grounds for dismissal of the previous appeal have been sufficiently addressed is a matter of judgment relating to factors such as the building's proximity to SINC boundaries and the ground conditions at the site. The Council's Tree Officer did not object to the proposal, but this did not mean that there would not necessarily be an impact on the valuable ecology in the woodlands.
8. There is no evidence before me that the Council has behaved unreasonably on procedural issues in the processing of the appeal having decided that the application should be refused.

Conclusion

9. I therefore conclude that unreasonable behaviour resulting in unnecessary expense for the applicant as described in PPG has not been demonstrated. An award of costs is therefore not justified.

Rory MacLeod

INSPECTOR