



Costs Decision

Site visit made on 6 June 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2022

Costs application in relation to Appeal Ref: APP/T0355/W/21/3285134 Land To The North West of Cedar House, Coombe Lane, Ascot SL5 7AS

- 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 Mrs Jenny Garner for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of planning permission for the erection of 6 small-scale agricultural structures (1 shed, 3 greenhouses, 2 netted fruit cages) on agricultural land.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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's contention is that the Council provided vague, generalised or inaccurate assertions about the proposal's impact, which was unsupported by any objective analysis. This has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.
4. The Council's Ecological Officer asked for an ecological report to be undertaken but there was very little time between advising the applicant and the determination of the planning application to provide this. This removed any possibility to negotiate this matter and, as such, it is said that this only left the option of appeal. The applicant sought clarity by email exchange as to whether, given the absence of priority habitat or species on the site, a study was in fact required. The site is modest in size, the development is small scale, and the site does not host European Protected Species, ancient woodland or Site of Special Scientific Interest within or close to the site. It is unclear why an ecological study would have been required and its requirement served to slow the process and raised the need to appeal.
5. Furthermore, the applicant contends that the email exchange between Council officers incorrectly refers to the proposal as domestic and allotments and considered the proposal to be a residential extension even though that was not what was being proposed. Refusal of the application has prevented works

being undertaken that would prepare the site for the forthcoming growing season noting that there would be no change of use of the land as the use is for agricultural purposes.

6. For these reasons the applicant considers that the Council have behaved unreasonably and have delayed the applicant in implementing the proposal which has resulted in loss of potential custom for the products proposed on the land.
7. The Council indicate that the need for an ecology survey came to light as part of the consultation process that took place as part of the consideration of the planning application. The applicant had not entered into pre-application discussions prior to the submission of the application to ascertain whether ecology was a matter for consideration. Given there was a matter of principle as to the Green Belt acceptability of the proposal, the Council did not formally request an ecology survey to be submitted at planning application stage. However, the Council contends that had the applicant entered into pre-application discussions prior to the submission of the application, then the matter of ecology would have arisen. The Council considers that given this, no unreasonably behaviour has occurred.
8. Notwithstanding the Council's comments, the applicant considers there was ecological information available to the Council that if shared with the Council's Ecologist might have changed the Ecologist's opinion prior to the application being determined, rather than this happening as part of the appeal process. Furthermore, the requirement to provide an ecology report could have been picked up at the planning application validation stage.
9. It appears to me that had pre-application discussion taken place then the matters of an ecology report may have come to light, and this would have informed the Council planning application validation process. However, given the Council held an objection to the proposal in respect of matters pertaining to Green Belt, this would not have obviated the appeal. Notwithstanding this, the appeal process has allowed the opportunity for the parties to work through matters relating to ecology and resolve them. This is within the spirit of the planning process.
10. The Council contends that the proposal would result in a material change of use of the land from agriculture or nil use to allow for the applicants own domestic/private purpose with the associated erection of structures and took the view that this did not fall within the specific Green Belt exceptions. I acknowledge that refusal of the planning application may have prevented works being undertaken that would prepare the site for the forth coming growing season. When there is a matter of principle concern, the Council would not normally enter into discussion during the course of the planning application being before the Council. The Council considers it dealt with the application in an acceptable manner and has not behaved unreasonably.
11. There is a difference in opinion between the parties in respect of whether the proposal constituted a change of use of the land. On this issue there is clear disagreement which, irrespective of ecology matters, has resulted in an appeal. I am satisfied that the planning application was considered on its own merit in light of policy considerations that the Council has substantiated its first reason for refusal. The view the Council reached in respect of proposal is one that the Council was intitled to reach. The fact that I have arrived at a contrary view in

relation to use of the land does not, of itself, show that the Council have behaved unreasonably.

12. The applicant comments that certain documents that supported the planning application were not placed on the Council's website for public viewing. This is a matter of Council procedure. If the applicant considers that malpractice has occurred, this is a matter to take up directly with the Council.
13. The 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. I do not consider any of the matters raised and discussed above would have obviated an appeal in this case.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Nicola Davies

INSPECTOR