



Costs Decision

Site visit made on 16 August 2022

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2022

Costs application in relation to Appeal Ref: APP/K1128/W/22/3294075 Langworthys Barn, A381 Oldaway Tongue to Langworthys Barn, West Alvington, TQ7 3GZ

- 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 & Mrs M Hill for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for the proposed storage/machinery shed for existing business use (resubmission of planning application 3399/20/FUL).
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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 parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appeal followed the refusal on 16 September 2021 of an application made on 16 March 2021 to erect a storage/machinery shed for existing business use. The sole ground of refusal was *'The proposed development, by virtue of the proposed size of the agricultural, tractor and machinery shed and extension to the existing agricultural tractor and machinery shed would fail to be commensurate with the existing agricultural need on site and would therefore fail to accord with JLP Policy TTV26 in responding to an identified agricultural need. No other lawful operational need has been identified on site that has achieved planning permission under JLP Policy DEV15 or any other superseded policies prior to the adoption of the JLP.'*
4. The applicant considers that the Council has exhibited unreasonable behaviour that made the appeal necessary in the first place in relation to a failure for the Council to co-operate with the applicant; the management of the application; and the failure to determine the application within the statutory time period.
5. I have been supplied with an application chronology as well as copies of correspondence between the applicant and the Council. A number of correspondence appears not to have been responded to, including emails of the 27th April 2021, 10th June 2021, 11th June 2021, 18th June 2021, and 21st July 2021. A response does appear to have been received from the Council to an

email of the 7th September 2021 which apologies for delays, which it states was due to a change in case Officer. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although I acknowledge behaviour and actions at the time of the planning application can be taken into account.

6. I have found in my appeal decision that the Council determined the application on the basis of an agricultural use, when the application proposed a storage/machinery shed for the existing business use. Notwithstanding this, the application form stated 'resubmission of planning application 3399/20/FUL', which was indeed related to an agricultural development. However, the applicant's correspondence to the Council clearly sought to clarify to the Council the proposed development and rectify the application description on which the Council determined the application.
7. In this regard the Council's actions and case management, including a lack of communication with regards the delay in determination, do not accord with the proactive approach sought through paragraph 38 of the National Planning Policy Framework highlighted by the applicant. Taking these points into account, I conclude that the Council has acted unreasonably in this matter.
8. However, an award of costs can only be made if unreasonable behaviour leads to unnecessary or wasted expense, and I do not believe that to be the case here. The Council did not feel able to grant permission, with substantive reasoning being provided and it has been necessary therefore, for this matter to be decided through the appeal process. Whilst the Council's basis for refusal relied on the lack of an agricultural need at the site, I have also found conflict with development plan policies as quoted by the Council, which have caused me to conclude that the appeal should be dismissed. Therefore, had the Council determined the planning application on the basis of the proposal being for a business use, the arguments advanced by the Council indicate that it would clearly have been refused. As such, the appeal would still likely have been lodged. The applicant has therefore not incurred any unnecessary expense.
9. Taking all the above points into account I find that although the Council has acted unreasonably, this has not resulted in the applicant incurring unnecessary or wasted expense, as described in the PPG. The application for costs is therefore refused.

S Harrington

INSPECTOR