



Costs Decision

Site visit made on 6 September 2022

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Costs application in relation to Appeal Refs: APP/G1630/C/22/3298078 and APP/G1630/W/22/3298544

Overton Farm, Maisemore, Gloucester GL2 8HR

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Stephen Chaplin for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against an enforcement notice alleging the erection of a single storey steel framed portal building and against the refusal of planning permission for the retention of an agricultural building to house machinery.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The basis for the appellant's claim for costs is the alleged lack of co-operation and the misrepresentation of the reason for the refusal which led to the issuance of the enforcement notice. They cite the dismissal of their concerns about the conclusions of the council's agricultural consultant's report and the lack of opportunity to provide further information in the form of an audit of buildings on the site following his comments that his "only concern" regarding the "reasonable necessity" for the building was the potential availability of other buildings for the storage of machinery, since the utilities company ceased trading from the adjoining yard¹.
4. Following this communication, the appellant is aggrieved that they were not given the opportunity to provide a detailed audit of their buildings to demonstrate that there were none available or suitable for the proposed agricultural storage use. The appellant considers that allowing the appellant to provide the audit would probably have resulted in the appeal being avoided.
5. It seems to me that the question of justification for the building was initially voiced by the council's agricultural consultant at the initial site meeting which

¹ email from Robert Fox to Sarah Barnes, Tewkesbury Borough Council (undated)

took place on 11 May 2021. It was at these early stages when concerns were highlighted regarding the small number of cattle and most of the land being rented out. A business plan was requested and received in October 2021. From this, it was surmised that there was currently no agricultural business being undertaken and therefore no clear agricultural unit to which the proposed building would relate. Although it was acknowledged that the appellant's plan was to take back all the land and create a livestock enterprise, this was considered would be at some point in the future. At that time, an agricultural unit would be established and need likely justified. It was also considered that with other buildings within the appellant's ownership and potentially no longer utilised, there may be existing buildings on site that could provide the required storage space.

6. While the council's rural consultant's advice did lean towards the possibility of other available buildings that might have been an appropriate alternative for the agricultural storage use, the council considered that not to be a sufficient planning reason by itself to justify refusing the proposal. Accordingly, the council relied on further reasons to support their refusal of the planning application and issuance of the notice.
7. The appellant also raised concerns about the drafting of the notice and highlighted mistakes which they considered cumulatively amounted to a defective notice. They considered that corrections needed would amount to a re-write which would cause injustice to the appellant. In considering the appeal on ground (e) and the appellant's concerns with the notice, I concluded that while there were drafting errors these did not require correcting and I also considered that the content of the notice to be clear so that the appellant understood what they had done wrong.
8. In considering the s78 appeal, although I did not agree fully with the Council, it is unlikely, in my view, that even if the Council had waited for a full audit of the buildings at Overton Farm, it would have come to a different view and that consequently an appeal would have been avoided. Its reasons rely on the numbers of livestock at the time of the application and the amount of land being rented out to Hartpury College.
9. I am satisfied, having regard to the facts and circumstances, that there was no unreasonable behaviour on the part of the Council which led the appellant to incur unnecessary or wasted expense in connection with the appeal. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S A Hanson

INSPECTOR