
Costs Decision

Site visit made on 3 October 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Costs application in relation to Appeal Ref: APP/P2365/W/22/3294141 174 Gravel Lane, Banks, Southport PR9 8BX

- 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 Ben Brownley for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for a storage building to replace previous storage building.
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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, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. The applicant's claim is that the Council incorrectly determined that the original building was in agricultural use, based its decision on incorrect measurements and unreasonably refused the proposal due to the lack of sequential test relating to flood risk. The Council failed to respond to the applicant's application for costs.
4. The main parties disagreed over the previous use of the building which the appeal proposal sought to replace. The Council stated within its officer report that the previous building was formerly used for agricultural purposes and that no evidence was provided which indicated the previous use. This then led the Council to find that the proposal did not fall within any of the Green Belt exceptions listed in the National Planning Policy Framework (the Framework) and thus determine that it was inappropriate development in the Green Belt.
5. The neighbour declarations served to simply confirm that a building existed on the site. However, the applicant's declaration stated that between 2019 and 2020 the building was used to store automotive parts associated with their hobby. Based on this information, I agreed with the applicant that the proposed building would be for a similar ancillary use to the residential property at 174 Gravel Lane to the previous building.

6. As can be seen in the appeal decision however, regardless of whether or not a lawful development certificate has been provided and even had the proposal been for the same use, the requirement for a replacement building to be in the same use forms only part of the relevant Green Belt test set out in paragraph 149 d) of the Framework. Consideration must also be given to whether the proposed building is materially larger than the one it replaces, to which I found it would be and thus determined, similar to the Council, that the proposal would be inappropriate development in the Green Belt. As such, the Council's interpretation of the previous use of the building did not lead them to a different conclusion in this regard.
7. The applicant states that the Council made an incorrect reference to the height of the proposed building, which resulted in the Council finding that the proposal would harm the openness of the Green Belt. I have set out my concerns with this matter within the appeal decision. Based on my findings, I am not convinced that the Council acted unreasonably in this regard.
8. Turning to the matter of the flood risk sequential test, although referenced within the decision notice, it is clear that the Council's issue with regard to flooding centred around the concerns with the detail of the submitted flood risk assessment and thus it was implied that a sequential test had been carried out. This was not similar to the approach taken in the examples the applicant referred to within the appeal. I have already stated that the redevelopment of previously developed land within the Green Belt and the requirement to carry out a sequential test for developments are separate matters.
9. Taking all the above into consideration, I find that there were fundamental disagreements between the main parties relating to the merits of the proposal and as such, the appeal process was unavoidable.
10. I therefore conclude that the Council did not act unreasonably and thus the applicant did not incur unnecessary or wasted expense, as described in the PPG.
11. A claim for costs is not therefore justified and accordingly it is refused.

H Ellison

INSPECTOR