



Costs Decision

Site visit made on 8 February 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Costs application in relation to Appeal Ref: APP/E3715/W/22/3305282 57 Moat Farm Drive, Hillmorton, Rugby CV21 4HQ

- 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 T Webb for a full award of costs against Rugby Borough Council.
 - The appeal was against the refusal to grant prior approval for a machinery and wine processing store.
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Decision

1. The application for an award of costs is allowed, in the terms set out below.

Reasons

2. Irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the Planning Practice Guidance (PPG) sets out the examples of unreasonable behaviour by local planning authorities which includes providing information that is shown to be manifestly inaccurate or untrue; preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and not determining similar cases in a consistent manner.
4. The applicant contends that the Rainsbrook Valley Landscape Sensitivity Study (RVLSS) was undertaken to assess the sensitivity of the landscape in relation to residential development as part of the local plan evidence base. This has not been disputed by the Council. Whilst it may well be a consideration in the decision-making process, it does not have the standing of planning policy. Moreover, it is clear it relates to residential rather than agricultural development. As such, appropriate weight proportionate to its status should have been given to the document in determination of the application.
5. In their evidence, the Council have referred to the Rainsbrook Valley as a protected landscape. However, no substantive evidence has been provided to support this. Based on the information before me, it is evident that the valley is not subject to any local or national designation or protection.

6. The Council, therefore, have elevated the landscape significance of this part of Rainsbrook Valley setting an unnecessarily high bar for agricultural development, without providing substantive evidence to support its position. This represents unreasonable behaviour that has required an appeal against the Council's decision to be lodged and unnecessary costs to be incurred as a result.
7. The Council's appeal case fell a long way short of substantiating its claim that the development would result in coalescence and harm to a Green and Blue Corridor, by failing to give any detailed explanation of the impact. In the absence of any justifiable evidence and by advancing vague and generalised assertions about the proposal's impact amounted to unreasonable behaviour.
8. The appellant has referred to applications for similar proposals granted prior approval in the Rainsbrook Valley. From the information before me I accept that there is a degree of inconsistency when comparing the development to the other schemes permitted, namely in respect of consideration of the impact upon the surrounding landscape. As such, unreasonable behaviour in terms of failing to determine similar cases in a consistent manner has been demonstrated.
9. In the planning judgement, it appears to me that having regard to the provisions of the GDPO and other material considerations, the development proposed should reasonably have been permitted. The refusal to grant prior approval therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

Conclusion

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rugby Borough Council shall pay to Mr T Webb the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Rugby Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Thandi

INSPECTOR