



Costs Decision

Site visit made on 15 May 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Costs application in relation to Appeal Ref: APP/D0121/W/23/3318636 Barn and land at Elwell Lane, Winford, Somerset BS40 8AH

- 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 North Somerset Council for a partial award of costs against Mr Cornelius Pearce.
 - The appeal was against the refusal to grant prior approval for change of use of an agricultural building and land forming the curtilage of the building to 2no. dwellinghouses (Use class C3) and associated building operations.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application for a partial award of costs is made on the basis that the appellant has used the appeal process to evolve their proposal and submitted new material and technical evidence with their final comments. The latter included an asbestos survey, review of TRICS residential trip rates and a comparison of other Class Q applications determined within the District. There was also a request that the Council, appellant and a neighbouring landowner enter into a tri-partite legal agreement under S278/S38 Highways Act 1980.
4. The 'Procedural Guide: Planning appeals – England' makes clear that appellants should be confident at the time they make their appeal that they are able to make their full case. If an appeal is made, the appeal process should not be used to evolve a scheme. Moreover, the Procedural Guide states at Paragraph 9.5.7 that final comments submitted at the 7-week stage should be concise and should not introduce new material or technical evidence.
5. The final comments were accepted on the basis that by doing otherwise I may have failed to take into account something which is material to the application. However, technical evidence such as the residential trip rate review went beyond what I consider appropriate for final comments. The need for information such as the asbestos survey and the comparison of Class Q applications determined by the Council could and should have been anticipated earlier in the process.

6. The trip rate review and proposal for a tri-partite legal agreement constituted new information which had not been available up until that point. The Council was therefore forced to reconsult the Highway Authority for its comments. Although no plans or details were submitted, it is clear that the appellant was seeking to evolve the scheme within the appeal process, rather than through negotiation, in an attempt to overcome the local planning authority's objections. This behaviour was unreasonable.
7. The question for me to consider is whether the submissions at final comments stage led to unnecessary or wasted expense in the appeal process. I accept the appellant's argument that the material was intended to address matters the Council had raised in its statement of case. However, much of it could have been provided at an earlier stage, as part of a comprehensive appeal submission. The importance of procedural fairness meant that the Council needed to be given additional time to comment. By introducing a new step in the process, the Council and Highway Authority were forced to set aside further time to respond to the late information. This would have been less time efficient than responding to the same information contained within the Grounds of Appeal.
8. It is vital that all parties in planning appeals adhere to the procedural guidelines, to support an efficient and timely process. In this case, the appellant acted unreasonably due to the volume of information, including technical evidence, submitted at the 7-week stage. That the appellant was using a professional agent who would have been familiar with the procedural guidelines makes it harder to justify the behaviour. An award of costs to cover the Council's time spent responding to the final comments is therefore warranted.
9. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has been demonstrated. A partial award of costs is therefore justified.

Costs Order

10. In the 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 Mr Cornelius Pearce shall pay to North Somerset Council, the costs of appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the final comments. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The Council is now invited to submit to Mr Cornelius Pearce, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Robert Parker

INSPECTOR