



Costs Decision

Site visit made on 31 August 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3317419 Field adjoining Bullock Horn Lane, Charlton, Malmesbury SN16 9DZ

- 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 M Carrol of Andover Agriculture for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal to grant approval required for Agricultural barn for the storage of hay, equipment, tools, thresher and fertiliser.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
3. Paragraph 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities. The applicant considers that the Council have exhibited unreasonable behaviour on a number of these.
4. In the circumstances of the case, it was not unreasonable for the Council to have concerns relating to the agricultural use of the site, including the nature and level of use of the woodland known as Andover's Gorse. This is especially given the requirements of the GPDO and the definition of 'agricultural land' outlined in Paragraph D.1 of Part 6 of the GPDO. The onus is on the applicant to submit sufficient information at the prior approval stage in support of their case. The Council determined the application on the basis of the information before it at the time, and that was not an unreasonable course of action. The Council provided clear and sufficient evidence to substantiate their concerns and the subsequent reason for refusal.
5. Furthermore, I have carried out my own assessment and concluded that the information submitted by the applicant was not sufficient to demonstrate that the appeal site was in use as agricultural land, which is used for the purposes of a trade or business. Consequently, the Council have not prevented or delayed development which should clearly be permitted.

6. The appeal application was made under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). As noted by the applicant, Class A does not specifically list 'flood risk' as a prior approval matter, unlike a number of the other Classes of the GPDO. Therefore, it was unreasonable for the Council to refuse the prior approval because of the lack of a site specific flood risk assessment and full details of a surface water drainage system. This is particularly as these matters could be dealt with via an appropriately worded condition, as stated by the applicant.
7. However, no unnecessary costs have been incurred in the appeal process in regard to this matter. The applicant had to submit an appeal given my findings above irrespective of this issue. Furthermore, the applicant has not undertaken a flood risk assessment or prepared a surface water strategy to support their case at appeal. Therefore, the refusal on these grounds has not resulted in any unnecessary or wasted expense in the appeal process.

Conclusion

8. For the reasons set out above, I conclude that I find that no wasted or unnecessary expense has been incurred by the applicant in the appeal process. The application for a full award of costs is refused.

Laura Cuthbert

INSPECTOR