



Costs Decision

Site visit made on 7 July 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Costs application in relation to Appeal Ref: APP/A2470/W/22/3305249 Clonmel Farm, Cold Overton Road, Langham LE15 7JG

- 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 Brian Sampson for a full award of costs against Rutland County Council.
 - The appeal was against the refusal of planning permission for the erection of an agricultural building and solar panels.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
3. The applicant is seeking a full award of costs on substantive grounds. It is alleged that the Council has acted unreasonably by making vague, generalised, or inaccurate assertions about the proposal's impact, failing to produce evidence to substantiate the reason for refusal and preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations.
4. In my decision upon the planning appeal that is the subject of this application, I have acknowledged the Council's concerns regarding the necessity, size, and financial viability of the proposal. However, the applicant submitted detailed evidence at planning application stage, which included detailed storage requirements and various photographs of the site and supplemented this with further detailed evidence at appeal stage, which included financial statements. This evidence assisted in leading me to conclude that the proposed building is justified having regard to the size and nature of the agricultural/horticultural operation. It would not be unreasonable for the Council to reach an alternative conclusion to my own, provided that it is able to produce evidence/analysis to properly substantiate its refusal reason.
5. The Council's committee report and subsequent appeal statement gives little weight to the detailed evidence provided by the applicant. It has instead consistently asserted that a building of the scale proposed would not be reasonably required for agricultural/horticultural purposes. However, this position is, to my mind, supported only by vague and generalised assertions

rather than by clear objective analysis. For example, given the current absences of fit-for-purpose storage arrangements at the site, any suggestion that the size of building is not commensurate with the extent of land it would serve would not, to my mind, be a reasonable or fair assessment. This is notwithstanding the paraphernalia that currently occupies the site or any constraints that could apply to hay making across some areas. Further, the Council has not qualified or quantified what information is required to demonstrate the operation to be financially viable, and financial statements indicating the smallholding to be profitable have been provided but not suitably acknowledged or analysed by the Council at appeal stage.

6. Overall, the Council has failed to provide substantiated evidence or an adequate analysis of the proposal to justify its position. This is notwithstanding identification of conflict with relevant development plan policies. As such, I find that the Council has behaved unreasonably, by failing to produce evidence to properly substantiate its reason for refusal and thus preventing development which should clearly have been permitted. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense at appeal stage, as described in the PPG, has been demonstrated and a full award of costs is justified.

Costs Order

7. 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 Rutland County Council shall pay to Mr Brian Sampson, 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.
8. The applicant is now invited to submit to Rutland County 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.

K Allen

INSPECTOR