



Costs Decision

Site visit made on 26 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Costs application in relation to Appeal Ref: APP/D3125/C/22/3302353 Land at Netherby Farm, Banbury Road, Swerford, Oxon OX7 4AR

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jeremy Sealey for a full award of costs against West Oxfordshire District Council.
 - The appeal was against an enforcement notice alleging the change of use of land from agriculture to a mixed use of agriculture and residential by the siting and residential occupation of a mobile home on the land.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be either procedural – relating to the process, or substantive – relating to issues arising from the merits of the appeal.
3. The application was not made on the form provided by the Planning Inspectorate. On that form there is a question as to whether the claim is for a partial or full award of costs. The applicant's claim does not specify this, but I have taken it to be a claim for a full award of costs.
4. Prior to the service of the enforcement notice a planning application¹ was submitted to the Council which sought, amongst other things, permission for the retention of the mobile home for a full-time agricultural worker. The application was recommended for approval by Officers, however members of the Council's Uplands Area Planning Sub-Committee determined that the application should be refused. Planning permission was subsequently refused on 29 April 2022.
5. The main thrust of the applicant's costs claim is that whilst the planning application was accompanied by various documents including financial information and a letter from the applicant's vets, not all the information was made available to the committee members. The applicant considers that this resulted in members taking the view that inadequate information had been provided and therefore refusing the application. This then directly resulted in the enforcement notice being served which is the subject of this appeal.

¹ Council Ref: 21/02024/FUL

6. It must first be noted that members of a committee are not bound by an officer recommendation, and they are entitled to reach a different view from their officers. It is not abundantly clear exactly what information was or was not available to members at the committee meeting, and the applicant draws my attention to an email from a Councillor who was at the meeting which refers to the Gantt Chart being shown but other information including the letter from the vets not being available. The applicant also refers to the fact that financial information was not provided to members. However, as discussed in my appeal decision, whilst the financial information may demonstrate a viable business it does not necessarily show that there is an essential need for a permanent on-site presence.
7. Nevertheless, the Planning Officer's report details the supporting information that was provided with the application and taken into account by the Planning Officer. The Officer concluded however that, at the time of writing, it was not certain that the essential need to justify permanent residential occupation could be met. As it was considered that the need for permanent on-site presence could potentially be met in the future, it was recommended that the application was approved for a temporary three-year period. There is no evidence before me to suggest that the Officer's report was not available to the committee.
8. From the available evidence, I am therefore satisfied that sufficient information and material was available to members in order for them to make their own decision, and I am not persuaded that the provision of any further material would have resulted in a different outcome. Consequently, I find it highly unlikely that an appeal would have been avoided.
9. The applicant is also aggrieved that he was not afforded the opportunity to re-submit the planning application in order to have it determined again. Notwithstanding the fact that the Council was under no obligation to withhold enforcement action pending the possible re-submission of the application, the applicant retained the ability to either appeal against the refusal or seek to re-submit the application.
10. Furthermore, the Council made it clear in an email dated 18 May 2022 that a report was being produced pursuant to issuing an enforcement notice. The subsequent notice and written appeal statement contained a site specific explanation of why it was considered expedient to pursue enforcement action and why planning permission should not be granted. The Council clearly substantiated its case and reasoned why, when read as a whole, the development was considered contrary to the development plan and the National Planning Policy Framework.
11. Accordingly, there is nothing to suggest that the Council acted in a manner that would amount to unreasonable behaviour, or crucially, that the Council's actions resulted in the applicant incurring unnecessary or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR