



Costs Decision

Site visit made on 21 August 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2023

Costs application in relation to Appeal A Ref: APP/W1850/C/22/3307197 Land at Turf Cottage, Garway Hill, Orcop, Hereford HR2 8RS

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Garry Blott for an award of costs against Herefordshire Council.
The appeal was against an enforcement notice alleging 'without planning permission, unauthorised operational development for erection of timber roof trusses'.
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Costs application in relation to Appeal B Ref: APP/W1850/W/22/3304925 Turf Cottage, Garway Hill, Orcop, Hereford HR2 8RS

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Garry Blott for an award of costs against Herefordshire Council.
 - The appeal was against the refusal to grant planning permission for 'construction of barn roof structure together with timber store, improved access and parking (part retrospective)'.
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Decision

1. The application for an award of costs is refused in regard to Appeal A and Appeal B.

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.

Matters relating to Appeal A

3. The applicant alleges that the Council failed to have proper regard to the drafting of the enforcement notice subject to Appeal A. As can be seen from my appeal decision in regard to Appeal A, while I made some corrections and variations to the notice, I found it to be otherwise sound, and not invalid or a nullity. The reasons for serving the notice were sufficiently clear and justified within the Council submissions.
4. The applicant also claims that the late withdrawal under Appeal A of the second requirement of the notice (ie to restore the previous roof) was not fully explained and led to additional submissions being necessary. However, this action by the Council followed issues raised by the applicant in their initial appeal statement. The applicant subsequently stated that they would not accept the removal of the second requirement.

5. As can be seen from my appeal decision, I have not removed the second requirement. I acknowledge that the Council could have been clearer and more precise in stating their reasons for attaching the requirement in the first place and subsequently deciding they would no longer pursue it. Despite this, I consider the Council actions to be part of an ongoing appeal process, where statements respond to other statements. It does not constitute unreasonable behaviour and has not resulted in the applicant incurring unnecessary or wasted expense such that an award of costs would be justified.

Matters relating to Appeal B

The applicant states that the Council have behaved unreasonably in that they failed to substantiate and fully explain the first reason for refusal in regard to Appeal B. While relatively brief, the Council submissions adequately substantiate and explain the reasons for refusal, with reference to relevant planning policy. It is sufficiently clear that the decision to refuse planning permission focused on the operational development, rather than a consideration of the use of the land. Notwithstanding this, the Council quite reasonably considered the stated purpose of the building as part of an assessment of its visual impact as well as in assessing if any material considerations might weigh in favour of the proposal.

6. The applicant also contends that the Council did not have regard to the preliminary ecological appraisal (PEA) in a timely way. The PEA was not submitted with the planning application, or the initial appeal documentation for Appeal B, but added a few weeks after the appeal was first made. The Council acknowledge the late consideration of this information, but once it was considered, they stated that the second reason for refusal could be overcome, subject to conditions. I acknowledge that the Council could and should have responded to the PEA more promptly.
7. However, regardless of this, a PEA would need to have been submitted and ecology matters considered in the appeal statement of case for Appeal B. Therefore, the only additional time and expense that could conceivably be as a result of the Council's late consideration of the PEA relates to the appellant's final comments. These final comments consist of a short paragraph basically saying that a PEA has been submitted but not acknowledged by the Council. Given this fact, and that Appeal B would have proceeded anyway regarding the first reason for refusal, I do not consider this matter to have resulted in the applicant incurring unnecessary or wasted expense such that an award of costs would be justified.

Conclusion

8. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not justified.

H Davies

INSPECTOR