



Costs Decision

Site visit made on 19 September 2023

by A Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2023

**Costs application in relation to Appeal Ref: APP/N4720/W/21/3287397
The Byre, off Tithe Barn Lane, Bardsey-cum-Rigton, Bardsey,
Leeds LS17 9DX**

- 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 Leeds City Council for a full award of costs against the Executor of the Estate of Mr R Lunn (Deceased).
 - The appeal was against the refusal of planning permission for change of use of redundant farm building to a single dwellinghouse and conversion of barn to garage/store development.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) says that an award of costs exists to discourage unnecessary appeals and that an appellant is at risk of a substantive award of costs being made against them if they make an appeal that has no reasonable prospects of succeeding. The PPG explains that this may occur when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
3. Planning permission was refused for three reasons. One of these concerned inappropriate development in the Green Belt. The Government attaches great importance to Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. The appeal was submitted to the Planning inspectorate in November 2021. However, the prior death of the original applicant, as stated on the planning application form, meant that the appeal could not be started until the receipt of a Certificate of Probate to allow the role of the appellant to be taken on by someone else with legal authority to do so. This caused the start of the appeal to be delayed for some time.
5. It is significant that before the appeal was started, a second application for a similar proposal at the site was refused by the Council and dismissed at appeal in June 2022 on Green Belt grounds. The findings of that appeal meant that the appellant should have been alert to the prospect that this appeal proposal would also be unlikely to produce a positive outcome from a Green Belt perspective given the similarities between the schemes. There was ample time

for the appellant to digest that appeal decision and consider their position before this appeal was started.

6. When this appeal was eventually started in 2023, the appellant did submit an Addendum to their original statement, together with a request for revised plans to be considered. However, the Addendum was extremely short and made no meaningful attempt to grapple with the Green Belt reasons behind the previous appeal decision. Indeed, there was not even any mention of the previous appeal decision in the appellant's submissions until their response to this costs application. It may be that the appellant had the previous appeal decision in mind when seeking to submit revised plans, which included a reduction in the size of curtilage for the proposed dwelling. However, the previous Inspector had already stated in paragraph 5 of his Decision that a limit of the curtilage of the site would not assist. Moreover, the appeal process should not be used to evolve a scheme and there is no guarantee that amended plans will be accepted by the Inspector, as was the case here for the reasons set out in the procedural matters of my appeal Decision. If the appellant thinks that amending the scheme will overcome the previous reasons for rejection then a fresh application should normally be made.
7. Without provision of further comprehensive evidence to overcome the Green Belt matters raised in the previous appeal, or any other material change in circumstances, it is difficult to see how a subsequent decision maker could be expected to arrive at a more favourable conclusion than the previous Inspector.
8. Furthermore, in my appeal Decision I found additional harm in relation to the conservation area and landscape for reasons including the fenestration design of the Byre. It would appear from paragraph 1.5 of their Addendum that the appellant recognised that this could be a factor that weighed against this scheme, referring to the attempted amendment of windows as being 'more appropriate to the building setting and character of the conservation area'. Again, the appellant should not have sought to rely on amended plans being accepted under this appeal.
9. In the above circumstances, I consider that this appeal had no reasonable prospect of succeeding once it was officially started. Therefore, although it was not unreasonable to make the appeal in the first instance, persisting with the appeal following the previous appeal decision at the site amounts to unreasonable behaviour on the part of the appellant. Accordingly, there is a clear case for an award of costs against the appellant to compensate the Council for the unnecessary costs that it incurred in resisting the appeal and defending its decision.
10. In terms of other matters raised, the appellant also sought to introduce an agricultural worker justification at the start of the appeal. This did not form part of the planning application. The PPG advises that an appellant is at risk of a procedural award of costs being made against them if they introduce a new ground of appeal or issue. However, as the appellant quickly withdrew the agricultural worker reference, the Council was not put to any additional or wasted expense in addressing this potential new issue as part of the appeal.

Conclusion

11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred and a full award of costs is therefore warranted.

Costs Order

12. 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 the Executor of the Estate of Mr R Lunn (Deceased) shall pay to Leeds City Council, 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.

The applicant is now invited to submit to the Executor of the Estate of Mr R Lunn (Deceased), to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Caines

INSPECTOR