The Planning Inspectorate

Costs Decision

Site visit made on 22 August 2023

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2023

Costs application in relation to Appeal Ref: APP/B2355/W/23/3315278
Pewitt Hall Farm Back Lane, Accrington BB5 2DZ

- 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 J Mohammed for a partial award of costs against Rossendale Borough Council.
- The appeal was against the refusal of planning permission for an agricultural building.

Decision

1. The application for a partial 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.

3. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an award of costs may be either procedural or substantive. Paragraph 047 of the PPG states that examples of unreasonable behaviour by local planning authorities in a procedural sense include prolonging the proceedings by introducing a new reason for refusal. Paragraph 049 of the PGG states that examples of unreasonable behaviour by local planning authorities in a substantive sense include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

4. The appellant's costs application relies on both procedural and substantive grounds. The appellant states that the procedural ground is that the Council's reason for refusal essentially was in relation to the impact of the proposal on the character and appearance of the area. However, the appellant is of the opinion that during the appeal process the Council has introduced three new reasons for refusal relating to agricultural need; animal welfare; and viability. The substantive ground is in relation to the Council's comments on viability, which the appellant considers are not based on reasonable grounds.

5. With regard to the procedural grounds, the planning officer report forms part of the Council's decision to refuse this application, expanding upon, and giving more justification for, the reason for refusal. The planning officer report includes a section titled "Agricultural Advice" which gives an overview of the comments provided by the Council's agricultural advisor.

6. Within this section the officer report refers to concerns over the need for an agricultural building of this size, and how the design could be altered to improve animal welfare. As such, whilst I appreciate that these issues are not specifically raised in the reason for refusal, they are referred to in the officer report. Consequently, I do not consider that the Council has acted unreasonably in repeating and further expanding upon these points within its appeal statement in order to support the reason for refusal.

7. In respect of viability, the "Balancing Act" section of the planning officer report does make a very brief reference to their being "no substantive evidence of a viable commercial business". However, no further commentary on this issue is provided, nor is it explained what relevance this had in the Council's determination of the application. Therefore, I consider that the Council has acted unreasonably in raising the issue of viability at the appeal stage.

8. Furthermore, in respect of the substantive grounds, I find the Council's comments on viability to be unsubstantiated and not supported by any case specific evidence. If the Council had concerns over the viability of the business, or the construction costs for the proposed building, it had an opportunity to request for such information to be provided during the consideration of the application. I have been provided with no evidence to demonstrate that the Council requested any further information on these matters when considering the planning application.

9. I therefore consider that the Council has acted unreasonably by raising vague, generalised and potentially inaccurate assertions about the appeal proposal and the existing business in respect of viability, and these claims are unsupported by any case specific analysis or figures.

10. Notwithstanding the above, unreasonable behaviour by the Council is not in itself sufficient to justify an award of costs. Paragraph 32 of the PPG states that "An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense."

11. The appellant's costs claim does not demonstrate how the unreasonable behaviour in respect of the viability issue raised by the Council, has resulted in unnecessary or wasted expense.

12. In response to the Council raising the issue of viability the appellant provided a short response within their 'Final Comments Statement' outlining that viability was not in the reason for refusal; there is no reason to doubt the proposal would be viable; and the objection from the Council is made on purely unsubstantiated grounds. It is not considered that this 'Final Comments Statement' was prepared by the appellant solely to address the issue of viability, as it responds to various other points and issues raised within the Council's appeal statement.

13. As such, it is not considered that the Council raising concerns in respect of viability at appeal stage has resulted in unnecessary or wasted expense to the appellant to justify a partial award of costs.

Conclusion

14. I conclude that unreasonable behaviour has taken place, however I do not consider that this unreasonable behaviour has resulted in unnecessary or wasted expense for the appellant. As such a partial award of costs is not justified.

R Major

INSPECTOR