



Costs Decision

Site visit made on 19 July 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Costs application in relation to Appeal A Ref: APP/H1840/C/22/3304996 10 Vallenders Road, Bredon, Tewkesbury, GL20 7HL

- 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 N Bradley for a full award of costs against Wychavon District Council.
 - The appeal was against an enforcement notice alleging the erection of an air conditioning unit
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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.
3. The applicant's claim is made on both procedural and substantive grounds. The procedural matters include (i) a lack of positive engagement despite using the pre-application advice procedure (ii) the Council changing its advice, (iii) delays and not responding to queries, (iv) failing to take into account material planning considerations and (v) failing to carry out adequate investigation and serving an unnecessary notice.
4. The substantive matters relate to (i) preventing or delaying development which either does not require planning permission or should have been granted planning permission (ii) failing to substantiate reasons for refusal and (iii) not determining similar cases in a consistent manner. The applicant has provided four appendices, two of which include all of the exchanges from preapplication stage up until the service of the notice.
5. In response, the Council states that the advice that planning permission was required for the development was given by email in June 2021 and following a review has remained consistent to date. It disputes actively discouraging a planning application and asked the applicant of his intentions in March 2022 when it stated that if no application was forthcoming, enforcement action would need to be considered.
6. The material considerations referred to by the applicant such as fallback, noise impacts and other examples of air conditioning units are matters to be addressed as part of the appeal rather than examples of unreasonable

behaviour. The Council considers that it was reasonable to serve a notice in the absence of a planning application from the applicant.

7. Dealing with the substantive arguments, the Council also considers that the development did require planning permission and it did not therefore prevent or delay development. The Council considers that its reasons were not vague, generalised and inaccurate. The Council has indicated that each case is assessed on its own merits and any other reported breaches would be investigated.
8. The Council has referred to the relevant paragraphs of the PPG which give examples of procedural and substantive unreasonable behaviour although the lists provided are not exhaustive¹. It has also referred to a lack of examples from the applicant to support the specific issues raised.

Procedural matters

(i) Lack of positive engagement and (ii) changing of advice and (iii) delays in addressing queries

9. Whilst the Council has chosen to respond to the matters raised, this part of the claim relates to matters which occurred prior to the service of the enforcement notice and the lodging of the appeal. The applicant has not referred to a part of the PPG that would allow him to claim for these type of matters as part of a costs claim.
10. The PPG does specifically refer to circumstances where the handling of the enforcement notice prior to the appeal can lead to an award of costs² but that does not include the procedural matters raised by the applicant which occurred prior to the service of the notice and the appeal process.

(iv) Fallback and other material considerations

11. I have addressed matters such as whether or not there is a fall-back position, and comparisons with other air conditioning units within the appeal decision. The absence of agreement upon these issues are matters of planning judgement and not examples of unreasonable behaviour.

(v) failing to carry out adequate investigation and serving an unnecessary notice

12. Paragraph 048 Reference ID: 16-048-20140306 of the PPG states that local authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that a more diligent investigation would have avoided the service of a notice and the subsequent appeal.
13. However, it is not clear what further investigations the Council could have carried out to avoid serving the notice. The air conditioning unit had been erected without planning permission. The applicant was advised to submit a planning application with a noise assessment unless he wished to consider alternative locations. He chose not to submit a planning application even when he was informed that an enforcement notice would be served.

¹ Paragraph 047 Reference ID:16-047-20140306 and Paragraph 049 Reference ID:16-049-20140306

² Paragraph 048 Reference ID-16-047 -20140306

Substantive Matters

(i) preventing or delaying development which either does not require planning permission or should have been granted planning permission

14. I have found that the development does require permission and have upheld the notice and dismissed the appeal.

(ii) failure to substantiate the reasons for refusal

15. The reasons for issuing the notice could have been clearer as the wording used is taken from Class G of the GPDO. However, reason (iii) refers to the current location of the development and noise levels. Paragraph 5.1.7 of the Council's statement refers to impact on neighbouring amenity and the absence of a noise assessment and advises considering alternative locations. This repeats the initial pre-application advice received by the applicant. The Council has set out its concerns in its evidence. The applicant was able to respond to the issues of noise in the context of the location in his evidence.

(iii) not determining similar cases in a consistent manner.

16. I have addressed this matter in the appeal decision and each case involves the exercise of planning judgement and are not examples of unreasonable behaviour.

Conclusion

17. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. An award of costs is not justified.

E Griffin

INSPECTOR