



Costs Decision

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST NOVEMBER 2023

Costs application in relation to Appeal Ref: APP/E2340/X/23/3319887 Tower Farm Gisburn Road, Blacko, Nelson BB9 6NF

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Kay for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of agricultural building for livestock.
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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 is of the view that, the Council's statement does not address in any substantial way the advice they submitted from Counsel. They consider the Council simply disagrees with the advice but are not able to refute the legal issues raised and could have obtained its own legal advice but does not appear to have done so. In addition, the applicant also contends that the two legal cases cited by the Council in their evidence are not relevant. Therefore, the Council has failed to support its own assertions on the case, and this represents unreasonable behaviour.
4. The PPG sets out that costs cannot be claimed for the period during the determination of the planning application, but all parties are expected to behave reasonably throughout the planning process. In this case, the Council clearly had sight of the Counsels advice during the lawful development certificate (LDC) application. Indeed, from the evidence before me, it is stated they considered this within the 'Committee Report' and sought internal advice from 'PBC Legal Services' who agreed with the officer's conclusion. This was further expanded upon within the Council's statement of case as part of the appeal.
5. Therefore, I consider the assertion made by the applicant to be incorrect that the Council did not take their own legal advice, and the evidence presented in the appeal submission clearly shows the considerations of how they came to their conclusions on the LDC. Moreover, the applicant had the opportunity at appeal stage in final comments to address the Council's statement of case, and

any disagreement of caselaw cited¹, or counter evidence in the appeal of which they chose not to.

6. Furthermore, I have no substantive evidence to find that the Council has acted contrary to, or not followed, well-established caselaw. The Counsel's advice is what it is, advice and the Council were not duty bound to accept it. A LDC is granted on the basis that the local planning authority is satisfied that the appropriate legal tests have been met.
7. The formal appeal decision sets out the considerations of the case, caselaw cited and there is no reason for me to repeat this in the cost application. I consider that it is a case which could have only been resolved by way of an appeal. Nonetheless, I have found the Council exercised their duty to determine the LDC in a reasonable manner on the balance of probabilities, and as such, I find the Council did not act unreasonably in coming to its decision.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as defined by the PPG, has not occurred and an award of costs is not warranted.

KA Taylor

INSPECTOR

¹ *R (oao Smolas) v Herefordshire Council [2021] EWHC 1663 (Admin)*