



Costs Decision

Site visit made on 19 September 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Costs application in relation to:

Appeal A Ref: APP/H1840/C/22/3309285

Appeal B Ref: APP/H1840/W/22/3309283

Churchfields, Hill View Road, Strensham, Worcester WR8 9LJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ms Katy Woods for a full award of costs against Wychavon District Council.
- Appeal A was against an enforcement notice alleging an unauthorised material change of use of the land from use as a dwellinghouse with associated residential gardens and equestrian to a mixed use of dwellinghouse with associated residential gardens, equestrian and for the operation of a commercial dog breeding and grooming business, together with associated operational development.
- Appeal B was against the refusal of planning permission for change of use from domestic/agricultural/equestrian land to dog breeding facilities. Erection of pens, kennels and grooming parlour (retrospective).

Decision

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

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. In this instance, the applicant contends that the Council used unreliable evidence to justify the enforcement notice and refusal of the associated s78 scheme. The applicant further alleges that the Council reached contradictory conclusions with regard to landscape impact between Appeals A and B, which has resulted in unnecessary and wasted expense.
3. Before determining the s78 application (Appeal B), the Council consulted Worcestershire Regulatory Services (WRS), the regulator for noise activity within the district. As part of WRS' investigation, recordings from a nearby property were obtained which were indicative of an adverse noise impact from the development. These recordings should not simply be discounted or ignored due a lack of credibility. Indeed, they would have formed an important part of the evidence base used to assess the noise impact.
4. The consultation response of WRS makes it clear that other factors also fed into their objection, including noise complaints and an analysis of the relationship between the appeal site and neighbouring properties. WRS also highlighted shortcomings with the submitted noise assessment, which I agreed were

legitimate concerns. Therefore, it is clear that there were several reasons for WRS' objection to the scheme, and the Council's ultimate conclusions with regard to noise impact. In turn, I do not consider that the Council placed undue reliance on unreliable evidence to justify the enforcement notice or refusal of the linked s78 application.

5. Nonetheless, the Council has conceded that its reason alleging landscape harm in the enforcement notice was not necessary. Indeed, this reasoning directly contradicted the officer's report relating to the s78 appeal, where no landscape harm was identified. The Council failed to act consistently in this regard, which led to the applicant having to address this reasoning within their evidence, which was ultimately unnecessary.
6. In turn, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's allegation of landscape harm, and a partial award of costs is therefore warranted.

Costs Order

7. 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 Wychavon District Council shall pay to Ms Katy Woods, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing arguments relating to the effect of the development on the landscape character of the area; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Wychavon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

James Blackwell

INSPECTOR