



Costs Decision

Site visit made on 3 January 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18.01.2024

Costs application in relation to Appeal Ref: APP/P1133/W/23/3318956 Teignharvey Barn, Teignharvey Road, Shaldon, Devon E291400 N72069

- 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 Mrs H McCormack for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of the Council to grant approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for application to determine if prior approval is required for a proposed: Change of Use of Agricultural Buildings to Dwellinghouses (Use Class C3), and for building operations reasonably necessary for the conversion. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q.
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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. The PPG also says that local planning authorities are required to behave reasonably in relation to procedural and substantive matters at the appeal.
3. Examples of unreasonable behaviour which may result in an award of costs include but are not limited to:- refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; lack of co-operation with the other party; prolonging the proceedings by introducing a new reason for refusal; and the withdrawal of any reason for refusal.
4. The applicant states that a partial costs application is submitted on the grounds that a new reason for refusal was introduced at the appeal stage. In this respect, they add that unnecessary and wasted expense was incurred through the preparation and submission of the appeal, including instructing solicitors. I agree with the applicant that the Council behaved unreasonably in this respect.
5. Even if the applicant was aware of the matter of the agricultural use and intended to undertake additional work, those proceedings do not relate to this

appeal. It is also conceivable that they could have chosen not to undertake additional work. I acknowledge the reasons why the Council felt it necessary to raise the matter at the appeal. In that context, it is incumbent on me, as the decision maker, to assess overall compliance with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q. However, if this matter had been a reason for refusal, the applicant may have had more time to provide additional supporting information. This could have included the submission of a sworn statement that is referenced in the evidence. As such, I am satisfied that unnecessary or wasted expense has been incurred in respect of the new reason for refusal.

6. The applicant seeks a full award of costs on the basis that a lack of co-operation on biodiversity matters led to an unrealistic and improbable argument and an erroneous decision to refuse. Additionally, the applicant says that the potential removal of the mast could have been dealt with using an appropriately worded condition.
7. These issues relate to the prior approval matters that I have not considered in the main decision. However, this costs application is an entirely separate matter to the appeal decision and I am therefore satisfied these matters can be addressed insofar as they relate to any claimed unreasonable behaviour.
8. The Council made it clear in their officer report and decision notice what its concerns were in respect of biodiversity matters. These were based on the evidence available to it at the time of making its decision. The Council briefly expanded on this reason for refusal in respect of the appropriateness of the use of a condition during the appeal process. Although the applicant disagrees with the Council's arguments, they had the opportunity to comment. Furthermore, they would have been expecting to address biodiversity as part of the appeal process. As such, I find no reason to conclude there was a lack of co-operation. Therefore, the Council did not behave unreasonably by refusing the scheme on this basis. No unnecessary or wasted expense has been incurred.
9. In respect of the telecommunications mast, the Council substantiated its reason for refusal within the officer report and appeal submissions. This was based on evidence available to it at the time. No unreasonable behaviour has been displayed and no unnecessary or wasted expense has therefore been incurred.

Conclusion

10. For the reasons set out above I conclude that, whilst the Council exhibited unreasonable behaviour in some respects in terms of the PPG, wasted or unnecessary expense has been incurred by the applicant in the appeal process in relation to addressing matters of the agricultural use only. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's new reason for refusal is justified.

Costs Order

11. 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 Teignbridge District Council shall pay to Mrs H McCormack, the costs of the

appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related the agricultural use, such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Teignbridge 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.

J Hills

INSPECTOR