



Costs Decision

Hearing held on 13 February 2024

Site visit made on 13 February 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Costs application in relation to Appeal Ref: APP/V4250/W/23/3333755 Shakerley Hall, Cumbermere Lane, Tyldesley M29 8NE

- 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 Alan Blears for a full award of costs against Wigan Metropolitan Borough Council.
 - The Hearing was in connection with an appeal against the refusal of the Council to grant planning permission for erection of an agricultural workers dwelling.
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Decision

1. The application for an award of costs is refused.

The Submission for Mr Alan Blears

2. An application for costs was made in writing prior to the Hearing. The basis of the applicant's claim is that the Council relied on a report from RSK ADAS Consultants Ltd to inform its decision and that this report contained inaccuracies relating to a Standard Man Days (SMD) calculation. This calculation sought to provide evidence of the labour requirement for the farming enterprise.
3. The applicant also requested time to consider and respond to the RSK ADAS report, but the Council proceeded to determine the application regardless. Had they been able to identify and respond to the inaccuracies, the applicant considers that the appeal would have been unnecessary.

The Response by Wigan Metropolitan Borough Council

4. The Council's response was submitted in writing both within its Statement of Common Ground (SoCG) and as a separate costs rebuttal. The Council concedes that an error was made in the calculation of SMD within the RSK ADAS report. However, the Council clarified that it would still have refused planning permission for the proposal due to the lack of evidence for the financial viability of the farm business, the need for a dwelling on-site due to the proximity to Tyldesley, as well as the impact of the development on the openness of the Green Belt.

Reasons

5. 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.

6. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal.
7. In its SoCG, the Council accepted the applicant's revised calculation for SMD which was further agreed by the parties at the Hearing. Nonetheless, the Council's Officer Report, SoCG and oral representations, clearly articulate wider concerns regarding the essential need for the dwelling and the financial viability of the existing farm enterprise. I am therefore satisfied that the Council substantiated its reason for refusal.
8. Moreover, the miscalculation of SMD appears to have occurred due to an unintentional mix up between the use of hectares and acres. I note that similarly the applicant's own SMD calculation in their Planning Statement was also incorrect. Work in addressing the SMD was therefore necessary to support the appeal submission overall, rather than as a consequence of unreasonable behaviour by the Council.
9. The Council's decision to not allow the applicant time to respond to the RSK ADAS report appears to be somewhat harsh, given that there had already been significant delays in the determination of the planning application. Whilst it would have been good customer service to explain that it was proceeding to determination, the Council is nevertheless entitled to determine proposals as submitted to them and without further dialogue, such that its behaviour cannot be deemed to be unreasonable.
10. Clearly there is a difference of opinion between the parties in respect of the planning merits of the proposal. Had the applicant been able to clarify and agree a position with regard to the labour needs of the enterprise during the consideration of the application, the evidence before me and that I heard orally, indicates that planning permission would have been refused in any event. The Council's reason for refusal did not turn on the SMD calculation alone, such that an appeal could still have occurred.
11. Whilst mindful of the fact that it is the applicant's right to appeal the Council's decision, had they considered the reason for refusal solely related to the SMD calculation, a revised application with amended information could also have been submitted. Even if the miscalculation error could be determined to be unreasonable behaviour, there is no evidence that it led to wasted expense in the appeal proceedings.

Conclusion

12. I acknowledge the applicant's evident frustration with their perception of the Council's approach. However, insofar as is relevant to this costs application, based on all of the evidence before me, I find that no action or inaction taken by the Council amounts to unreasonable behaviour as described in the PPG, directly resulting in unnecessary or wasted expense at appeal. Therefore, an award of costs is not justified.

M Clowes

INSPECTOR