



Costs Decision

by S Heywood BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

**Costs application in relation to Appeal Ref: APP/Y3940/W/23/3317020
Oaksey Park Golf and Leisure, Oaksey Park, Oaksey, Malmesbury
Wiltshire, SN16 9SB**

- 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 Cotswold Ecohomes Ltd. for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. The appellant's costs application raises concerns regarding the way in which the planning application was handled and the justification of the reasons for refusal. It draws upon the evidence submitted in the appeal to justify the claim for an award of costs against the Council.
3. The appeal relates to an application under s.73 of the Town and Country Planning Act 1990 (the Act) to remove conditions restricting occupancy of the dwellings to holiday accommodation, and to replace them with a condition restricting occupancy to persons over the age of 55 years.
4. The main issue in my decision relates to whether the conditions in question can be removed and replaced having regard to the scope of s.73 and the *Finney* judgement¹. For the reasons set out in the appeal decision, I have concluded that it would be beyond the powers under s.73 to do so, as it would result in a conflict with the "operative" part of the planning permission. Accordingly, I have not considered the merits of the proposed development.
5. On that basis, it is also not possible for me to consider the grounds for this costs application. As with the appeal decision, to do so would prejudice a future decision maker on any planning application which may subsequently be submitted.
6. The costs application is refused for these reasons.

¹ ¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

S Heywood

INSPECTOR