



Costs Decision

Site visit made on 23 January 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Costs application in relation to Appeal Ref: APP/J2210/W/23/3327878 Little Bank Farm, Garlinge Green, Chilham CT4 5RU

- 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 C Cooper for a full award of costs against Canterbury City Council.
 - The appeal was against the refusal of planning permission for change of use of part of agricultural land to keeping of horses and erection of agricultural building on agricultural land.
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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. Although the costs application implies that the Council failed to determine the application, a decision was issued several months before the appeal was lodged. I have therefore given this aspect of the costs application no further consideration.
4. It is otherwise alleged that the Council behaved unreasonably by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. In particular, it is contended that the Council had inadequate regard to evidence submitted prior to determination of the application, and that insufficiently justified conclusions were reached about the proposed scale of the agricultural building and the capacity of other land within the holding.
5. In the Council's Appeal Statement of Case, it was conceded that the scale of the proposed building reflected its intended use for storage of machinery as well as hay. This was based on details provided on a block plan which had been made available while the application under consideration. The Officer Report does not appear to have taken full account of that plan, when compared to the more clearly stated position in the subsequent Statement of Case.
6. However, the Council's overall conclusions regarding the effect of the proposed building on the Kent Downs National Landscape are related to its siting on elevated land and proximity to a public right of way, as well as its scale. I have likewise concluded that the proposed building would be unacceptably harmful to the designated landscape. Therefore, while the Council's failure to

- acknowledge the additional evidence provided on the block plan was unreasonable, there is no clear evidence that a different conclusion would have been reached, had this evidence been more clearly referenced.
7. With regard to the constraints at Woodlands Farm, the Council did not rely entirely on aerial imagery, nor was it unreasonable for them to take that available information into account. The Officer Report indicates that the appellant's evidence on this point had been considered, but that it was concluded that the siting of the proposed building had not been 'sufficiently justified'. This is a matter of judgement, and the Council was able to justify its position in the Statement of Case for this appeal. While I acknowledge that the appellant considers the Council's position to be wrong, there is no clear evidence of unreasonable behaviour in the way the Council weighed up this aspect of the evidence when considering the application.
 8. It is also contended that the Council could have issued a split decision, permitting the change of use to keeping of horses and the pond, which they had concluded were acceptable. However, the PPG states that, where a local planning authority considers only part of a development to be unacceptable, it will normally be best to seek amended details from the applicant prior to a decision being made. According to the PPG, other potential mechanisms for issuing a split decision are only appropriate in exceptional circumstances and there is no clear evidence that such circumstances exist in this case.
 9. Since the appellant has chosen to pursue this appeal, there is little evidence that he would willingly have submitted amended details, omitting the proposed agricultural building, prior to determination of the application. Therefore, there is no clear evidence that the potential cost of re-applying for the change of use and pond could have been avoided. Furthermore, in view of my statutory duty under Section 85 of the Countryside and Rights of Way Act 2000, and representations from an interested party, I have considered the proposal as a whole. Therefore, the appellant's evidence regarding the change of use and pond was not abortive, since it assisted me in understanding his case in full.
 10. While the incorrect policy reference in the reason for refusal was unhelpful, the Council's Officer Report referred appropriately to Policies EMP13 and EMP15 where relevant. This error did not result in abortive costs at appeal stage, since the appellant's evidence on both policies was required so that I could understand his case.

Conclusion

11. For the reasons set out above, whilst I have found limited evidence that the Council exhibited unreasonable behaviour with regard to its consideration of the block plan and the incorrect policy reference, I find that wasted or unnecessary expense has not been demonstrated as a result. I conclude therefore, that the application for an award of costs should be refused.

Jane Smith

INSPECTOR