



Costs Decision

Site visits made on 10 April 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2024

Costs application in relation to Appeal Ref: APP/P2365/W/23/3324305 Bungalow Farm, Heaton's Bridge Road, Scarisbrick, Lancashire L40 8JQ

- 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 Smithy Mushrooms Limited for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the variation of conditions No. 2, 3, 5, 6, 8, and 18 imposed on appeal reference APP/P2365/W/21/3269788 to amend the growing and incubation rooms from portal framed buildings to polytunnels.
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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. The application for an award of costs is made on procedural and substantive grounds. It is argued that the reasons for deferring the application by members at both the November 2022 and March 2023 Committee meetings were unjustified as they related to matters that were either not under consideration as part of the application or for which material had already been submitted. As such, it is suggested that the Council has prevented or delayed development which should have been permitted having regard to the development plan, national policy and other material considerations. It is also argued that the reason for deferral at the March Committee was a matter capable of being dealt with by condition. The PPG indicates that, in such circumstances, costs may be awarded against a Council.
4. The appeal is made against the failure of the Council to determine the application to vary a number of conditions on a development for a mushroom farm. The application was first considered by the Committee of the Council responsible for planning at its meeting in November 2022. The application was recommended for approval by Officers and the Council have indicated that, should members reach a decision on a planning application that is contrary to the advice of Officers, the constitution requires that consideration of the application must be deferred to a later meeting.
5. Be that as it may, the members must have good reasons for seeking to refuse the application or to defer consideration of it. The minutes of the Committee meeting indicate that in this instance it was related to the access, the

temporary access (which at that point formed part of the application) and highway safety. The applicant alleges that at the Committee meeting the members voted to refuse on no grounds but were told there must be a reason for refusal. However, the Council indicate although refusing the application was discussed it was not voted on and there is no record of such a vote in the minutes of the meeting, which records the resolution of the Committee being as set out above.

6. The Council have stated that members knew that they could not reassess the acceptability of the approved access. Nevertheless, it is clear from the reason given for the deferment and the email sent to the applicant's agents by Officers following the meeting, which refers largely to wanting clarification and certainty that the required visibility splays can be achieved on the approved access, that the reason for deferring the application did in part relate to the acceptability of the approved access. If this had been the sole reason for deferring the application, it would have been unreasonable behaviour.
7. However, the reason for deferring also relates to the temporary access which at that stage formed part of the application. The Committee had evidence that the temporary access had a Section 171 Licence from the local highways authority. Nonetheless, the Parish Council had provided evidence from a transport consultant, which I understand they also raised verbally on the day, which highlighted concerns about whether adequate visibility could be provided at the temporary access. In the light of this it was not unreasonable for the Committee to defer making a decision on the application in order to seek clarification from the highways authority regarding the safety of this temporary access, especially as the consultation response from the local highways authority makes reference to having no objection to the "proposed residential development".
8. The application was next considered at Committee in March 2023, when it was again recommended for approval by Officers. The minutes of this meeting indicate that it was deferred to allow a light impact assessment to be submitted for the polytunnels. The applicant has stated that the Committee discussed issuing a stop notice but were told there would be no legal reasons for doing so. Be that as it may, this was not the formal resolution for the deferment. The fact that they discussed alternative courses of action and sought advice from Officers does not in itself represent unreasonable behaviour.
9. Whilst the appellant had submitted a revised lighting strategy with the application, this considered only the external lighting of the development. It is clear from the minutes and the email sent to the applicant's agent by Officers following the Committee that the concerns related to the lighting in the polytunnels themselves as they would no longer be within a building. This type of lighting is not covered by the submitted lighting strategy.
10. As outlined in my decision, I have indicated that I am satisfied that this is not needed. However, this is because the appellant has confirmed that their mushrooms are grown in the dark and that as a consequence the internal lighting would only be used during harvesting and that the polytunnels would be made from a "black-out" material that would prevent light entering and leaving the polytunnels. This information appears only to have been provided at the appeal stage and so was not available to members at the time they deferred the application. Given this, I do not consider it was unreasonable for

the Committee to defer making a decision to seek clarification regarding this matter. Moreover, had this information been submitted to the Council after the March Committee then the appeal against non-determination could potentially have been avoided.

11. The appellant has suggested that the lighting assessment could have been secured by a condition. Whilst this is a potential option, the members did not refuse the application on this ground but merely deferred it to seek clarification before they made a decision. It is not necessarily unreasonable for them to do this if in their view it is a matter that they want assurances on before granting permission, rather than one that could be left to be dealt with by Officers by way of discharging a condition. To this end I note that the PPG advises that the use of conditions requiring the submission of outstanding details should be limited.
12. I note that lighting was not raised as an issue by members in November. However, the application had been subject to further consultation in the intervening period and the responses to this could have drawn other issues to the attention of members, even if there were no objections to the submitted lighting strategy by technical consultees.
13. Furthermore, whilst Officers recommended approval on both occasions, the reasons for deferring the application on both occasions are proper planning grounds. It is not necessarily unreasonable for members, after considering all the evidence before them, including verbal presentations at the Committee itself, to conclude differently to their Officers and to seek further clarification on relevant planning matters.
14. As such, I am satisfied that the Council has met its obligation to give proper consideration to the planning application, and that it has not prevented or delayed a development which should clearly have been permitted having regard to the development plan, national policy and any other material considerations, or on grounds which were capable of being dealt with by condition.
15. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated, and an award of costs is not justified.

Alison Partington

INSPECTOR