



Costs Decision

Site visit made on 1 May 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Costs application in relation to Appeal Ref: APP/J1535/W/23/3328811 Epping Road, Harlow (Easting: 541769, Northing: 208241)

- 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 A Montalbano for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal to grant prior approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a failure to adhere to deadlines. In addition, substantive matters include 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.
4. The applicant's application for costs broadly relates to both the procedural and substantive matters listed above in so far as they are relevant to the interpretation of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO). The procedural matter relates to the failure of the Council to determine the application within the 28 day period set out within paragraph A.2 (2)(iii) of Schedule 2, Part 6, Class A.
5. With regard to substantive matters, the applicant contends that the Council's reason for refusal is '*ultra vires*' as the GPDO does not require the submission of any proof that the proposed building is required for agricultural purposes. The applicant asserts that this resulted in a planning appeal which could have been avoided and that the Council have subsequently failed to substantiate the reason for refusal as part of the appeal.
6. With regard to the procedural matter, the application was received by the Council on 22 May 2023. A decision made on 17 July 2023 was, therefore, considerably later than the 28-day deadline for the Council to notify the

applicant as to whether prior approval is given or refused, as set out in paragraph A.2 (2)(iii) of the GPDO. However, the effect of the deadline only precludes the Council's ability to make a determination on matters of prior approval under the GPDO. Such circumstances are dependent upon whether the proposal would be permitted development under Class A. It will be seen from my appeal decision that I concluded that the proposal would not be permitted development under Class A. Consequently, the Council's delay in determining the application constitutes unreasonable behaviour but did not result in unnecessary or wasted expense for the applicant in the appeal process.

7. With regard to the substantive matter, it will be seen from my appeal decision, that I have agreed with the Council that the GPDO requires that the proposed building be reasonably necessary for the purposes of agriculture within the agricultural unit.
8. Whilst I appreciate that the reason for refusal will have been a disappointment to the appellant, the Council were not unreasonable in coming to that decision, and indeed following consideration of the application, I have concurred with the Council.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. A claim for costs is not therefore justified and accordingly it is refused.

B Pattison

INSPECTOR