



Costs Decision

Site visit made on 15 May 2024

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Costs application in relation to Appeal Ref: APP/U2750/W/23/3333324 Ians Field Farm, Burniston Road, Newby, Scarborough, YO13 0DA

- 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 Shaun Millward for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for an agricultural storage building (straw).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant states that the Council has acted unreasonably in relation to the reason for refusal. The appellant claims that the Council has adopted an illogical position in stating that the appeal proposal would hold an isolated position and that they have deliberately dismissed a key factor, the existence of the livestock unit to the north, in assessing the perceived landscape impact of the scheme, which enabled them to form a negative position and subsequently refuse the application. The appellant goes on to state that the Council has sought to legitimise this position by referring to the approval of the livestock unit as an 'exception', when it should recognise that permission was granted for the replacement livestock unit, and it is now fully established. The appellant considers that the siting of an agricultural straw shed adjacent to an existing livestock unit is entirely normal and would not be an unusual or alien feature within the surrounding rural landscape.
5. The Council states that it took account of the present character of the site and surroundings following a site visit, and that the decision to refuse the proposal was based on the likely landscape impact arising from the proposal, given its location in the open countryside.

6. A number of references throughout the Council's documents suggest that it has not taken appropriate account of the present character of the site, particularly the existing livestock unit. Within its Decision Notice, the Council refers to the siting of the proposal as being in an isolated position, located away from the host farmstead, resulting in the farmstead unnecessarily projecting and creeping into the open countryside. While I agree that it would be positioned away from the former farmstead (now used commercially for storage), there is no acknowledgement of its proximity to the existing livestock unit to the north, or the extent to which this existing building has already extended the built form of the farm into the countryside. When discussing the visibility of the proposed building from the adjacent Cinder Track, again there is no reference to this existing building and how this might influence the perception of the proposal.
7. The Council's Statement of Case (SoC) at paragraph 2.3 states that 'one large agricultural building would be erected within the open countryside where there is presently none' and that 'its siting would be remote from residences and other buildings in the holding'. Again, there is no acknowledgement of the existing livestock unit to the north and so to describe the site as remote from all other buildings in the holding is factually incorrect. The Council goes on to conclude that the building would therefore stand out as a prominent built incursion into the countryside, which would be harmful to the rural character of this part of the borough, without seemingly acknowledging and giving any consideration to the impact that the existing livestock unit has on the character and appearance of the area.
8. While reference is made later in the Council's SoC to the existing livestock unit, this is in the context of the agricultural need, rather than as part of any assessment of the siting of the proposed building and its impact on the character and appearance of the area, including the adjacent Cinder Track.
9. Within its Costs Rebuttal Statement, the Council states that the livestock unit does not alter the relationship between the proposed development and its location in the open countryside or the relative impact of the proposed development on that landscape. While the impact of the proposal on the character and appearance of the area is a matter of planning judgement, given the size of this existing livestock unit, and its proximity to the proposed building, it does not appear reasonable or logical for the Council to suggest that the presence of this existing building would not alter in any way, the relative impact of the proposed development on that landscape, given that it is an established feature within it.
10. As such, the evidence before me suggests that the Council has failed to give due regard to the existing livestock unit as part of the appeal site's context and this has led to inaccurate assertions about the impact of siting the building as proposed when formulating their refusal to grant prior approval.
11. The appellant has had to prepare and submit evidence in response to the Council's refusal reason and its associated appeal submissions. As such, the appellant has incurred unnecessary expense. As this is the only ground for refusing to grant prior approval, a full award of costs is justified to cover the appellant's expense in contesting the Council's case on the siting of the development.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Yorkshire Council shall pay to Shaun Millward, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to North Yorkshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S Brook

INSPECTOR