



Costs Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date **01 July 2024**

Costs application in relation to Appeal Ref: APP/P1615/W/23/3333774 Harts Farm Chapel Lane, Redmarley, Gloucester GL19 3JF

- 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 Jacques De Wit for a full award of costs against Forest of Dean District Council.
- The appeal was against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition attached to planning permission Ref P1009/10/FUL, dated 25 May 2010.

Decision

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

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. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature.
3. The appellant claims that the Council has misinterpreted its own policy, national policy and case law. Had the Council correctly interpreted local policy and case law, the section 73 application would have been granted and the appeal avoided. The Council argues that the applicant chose to make a section 73 application without formal pre-application advice.
4. The section 73 application which was validated by the Council was ultimately determined to be unsuitable. It was considered that the proposal would not provide the applicant with the outcome they desired. This was because the Council considered that the variation of condition application could not be used to materially alter the nature of the development that was originally permitted which, in this case, was an 'extension and alterations to the dwelling to provide annexed accommodation'. As such, the Council considered that the principle of the development was unacceptable, and this was described as contrary to the National Planning Policy Framework, Policy CSP.1 of the Core Strategy, and Policy AP.1 of the Allocations Plan. No further explanation of why this would conflict with both local and national policy was provided.
5. It is apparent through the Council's appeal documents and discussions with the applicant prior to the submission of the application, the reasons why the Council considered the application could not be supported. Thus, in response to the application for costs, the Council does not accept that it acted unreasonably

- and maintains its position that the proposal could not be determined by way of an application under section 73 of the 1990 Act.
6. However, while there is reference to the principles of established case law found in *Finney*¹, the Council maintains a silence on more recent case law found in *Reid*² which had been brought to their attention prior to the submission of the section 73 application and its determination and during the appeal proceedings. Indeed, I note from the appeal submissions that the appellant raised the matter of *Reid* on several occasions via email correspondence with the Council and in their application papers and provided a transcript of the judgement.
 7. Having regard to the subsequent approval of the application for full planning permission, I consider that had the Council had regard to the highlighted case law, an appeal would likely have been unnecessary. I find that the Council's position was flawed and their disregard of relevant case law, brought to their attention by the appellant, resulted in unreasonable behaviour which led to wasted expense in the submission of an appeal.
 8. 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 the Forest of Dean District Council shall pay to Mr Jacques De Wit, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in pursuing appeal Ref. APP/P1615/W/23/3333774; such costs to be assessed in the Senior Courts Costs Office if not agreed.
 9. The applicant is now invited to submit to the Council of the Forest of Dean District 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 A Hanson

INSPECTOR

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

² *Freddie Reid vs SSLUHC* [2022] EWHC 3116