



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 Forest of Dean District Council for a full award of costs against Mr Jacques De Wit.
- 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 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. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. In this case, it is for the Council to demonstrate that it has incurred unnecessary or wasted expense in defending an appeal against its refusal to grant planning permission to vary condition 03 of planning permission reference P1009/10/FUL.
3. The Council claims that the appellant should have sought formal pre-application advice prior to making an application to vary the condition. Furthermore, while the appellant may not agree with the Council's decision it considers that having applied 'due diligence to legislation', the section 73 application could not be used to materially alter the nature of the development that was originally permitted. The cost application is therefore submitted by the Council because of the appellant's unreasonable behaviour which it is claimed has resulted in wasted and unnecessary expense through the appeal process. The error is said to be further acknowledged by the submission of the application for full planning permission, which was subsequently approved, thus reinforcing the Council's position that it was correct in refusing the section 73 planning application, reference P1106/23/FUL.
4. I acknowledge that formal pre-application advice can provide guidance which may help to avoid wasted time and expense, but the service is not mandatory and thus it is for the applicant to determine whether such advice would be beneficial. The appeal submissions state that the appellant was reluctant to apply for full planning permission, consistently relying on case law found in

*Reid*¹ which was articulated to the Council to support their section 73 application. While the Council refer to considering 'legislation' to determine the application, there is no reference to *Reid* which is most pertinent to this case.

5. Overall, I find that although a further application was submitted 'under duress' and approval to vary the condition was granted, the appellant was entitled to appeal the decision and that they did not act unreasonably by doing so.
6. The costs regime is intended to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, and to encourage local planning authorities to properly exercise their development management responsibilities. There is nothing that I can see in the appellant's behaviour that I consider amounts to unreasonable conduct.
7. An award of costs is only justified if unreasonable behaviour is the cause of unnecessary or wasted expense. Had the Council exercised its development management responsibilities appropriately, it is likely that the appeal would not have been considered necessary.
8. In conclusion, I am satisfied, having regard to the facts and circumstances, it has not been demonstrated that the Council has incurred unnecessary or wasted expense in connection with the appeal through unreasonable behaviour of the appellant. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S A Hanson

INSPECTOR

¹ *Freddie Reid vs SSLUHC* [2022] EWHC 3116