

Costs Decision

Site visit made on 28 June 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

**Costs application in relation to Appeal Ref: APP/R1038/W/24/3339572
Land opposite Greenfield Cottage, Cowley Lane, Holmesfield, Dronfield
S18 7SD**

- 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 Neil Havenhand for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for change of use of land for keeping of horses, erection of timber frame stable block on concrete base, plus solar panels on roof.
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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 appellant contends that the Council has at a late stage introduced new and substantial evidence in relation to the need for a Coal Mining Risk Assessment (CMRA). The appellant also considers that this issue could instead be addressed by imposing a condition. The PPG includes reasons for awarding costs of introducing new evidence at a late stage, and refusing permission on a planning ground capable of being dealt with by conditions. Expense was incurred in responding to this issue, including the appellant's rebuttal evidence, and in the time taken to attempt to commission a CMRA at late notice.
4. The CMRA requirement was only raised by the Council at appeal stage. The Council suggests this was not an additional reason for refusal, but a material consideration to aid understanding, as local and national policy requires the site to be safe and suitable for development. Notwithstanding this, I accept that the CMRA requirement should instead have been identified as part of the determination of the application. Indeed, the Coal Authority identifies no record of being consulted on the appeal application, and that this may represent a failing on behalf of the Council. I therefore find this demonstrates unreasonable behaviour. I also note the appellant's concern that the Council has not explained this failing, or apologised for it.
5. However, I find the extent of this unreasonable behaviour is tempered to a large extent. This is because the CMRA requirement was also cited as a reason for refusal for the appellant's revised scheme¹, prior to the appeal submission.

¹ Council reference 23/00853/FL.

Furthermore, that decision notice included a formal Note; *"In the event of a CMRA being submitted which satisfies the Coal Authority such that they withdraw their objection, the Council would not pursue [the] reason for refusal... in any future appeal proceedings."* Its officer report identified the Coal Authority objection was due to the site's location in a Development High Risk Area.

6. I therefore do not find it inconceivable for the professionally represented appellant to have considered whether this matter could or should also apply to the appeal site only several metres away, and resultingly consider any potential mitigation in order to gain the best outcome.
7. Furthermore, the expense of attempting to commission a CMRA would still have been necessary had the matter been identified earlier. My appeal decision identified that it would not be reasonable to use a condition to address this. Had there been time to fully procure a CMRA, the appellant would have then additionally paid out its full cost, and their written evidence would have had to include an update on this matter. I therefore do not find that wasted expense has occurred.
8. The appellant also contends that the Council did not follow the PPG advice, because its case was not reviewed promptly as part of sensible on-going case management following the lodging of the appeal. The appellant was only notified of the Council's position relating to the coal mining issue on receipt of its Statement of Case, 3 months later. I accept that it would have been better case management, and courteous, for the Council to have formally advised the appellant of this earlier.
9. Notwithstanding this, the Council had no formal obligation to do so under the 'Procedural Guide: Planning appeals – England'. The Council worked to and complied with the timetable identified in the appeal's 'start letter'. Again, it was also not unreasonable of the Council to have expected the appellant to have been aware of the matter, due to the refusal reason on the associated application.
10. It would be speculation for me to comment on why the appeal decision at 'Hut Lane' near Killamarsh² does not cite a CMRA requirement. The fact remains that the appeal site's risk from coal mining has recently come to light. The Council cannot therefore ignore the policy requirement to address this, even if it were to result in inconsistent decision making.
11. Therefore, although I have found that the Council has been unreasonable in some regard, I am unconvinced that the appellant has incurred wasted expense in seeking to address this. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L N Hughes

INSPECTOR

² APP/R1038/W/23/3326648