

Costs Decision

Site visit made on 18 July 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Costs application in relation to Appeal Ref: APP/H1840/W/24/3341562 Shernal Brook Farm, West Side, North Littleton, WR11 8QP

- 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 Lewis Albutt for a full award of costs against Wychavon District Council.
 - The appeal was made against the Council's decision to refuse planning permission for the change of use of agricultural land to domestic garden.
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Decision

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

Reasons

2. The *Planning Practice Guidance* (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The basis for the appellant's costs application is set out in writing. In summary, (i) the appellant considers that the Council prevented or delayed development which should clearly have been permitted; (ii) acted contrary to, or not following established case law, and (iii) persisted in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
 4. The Council has not responded to the application.
 5. On the first point, since the development has already taken place, the Council could not be seriously accused of preventing or delaying development.
 6. In pursuing the second point the appellant has not cited any case law. I note the reference to national advice and guidance on the use of conditions, but this is of limited relevance to this case, which has little or nothing to do with conditions or their use.
 7. On the third and last point, the 2016 appeal decision referred to in my decision on the substantive appeal authorised the use of the access for planning purposes in connection with the conversion to a dwelling. The Inspector was aware that the track leading to the site was a bridleway and took that into
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account in his assessment. That decision was not legally challenged and the appellant subsequently implemented the approval, and has since used the track to access the dwelling for several years. The decision did not purport to allow the unlawful use of the bridleway under other legislation, and there is no evidence that anyone, including the appellant, has been prosecuted for unlawfully using it in the several years since the dwelling was first occupied.

8. No evidence has been produced either by the Council or Highway Authority to convince me that the change of use subject of appeal would or has resulted in the generation of more traffic movements than was the case when the Inspector considered the matter in 2016. Indeed, in its final representations to the Council on the application the Highway Authority said:

'..given the Appeal Decision, the Highway Authority is now of the opinion it would be difficult to seek to justify a recommendation of refusal on safety grounds alone.'

9. Yet the Council in its reason for refusal, without producing any substantive evidence, alleges that:

'The proposal would therefore fail to demonstrate a safe access to the highways network...'

10. It appears to me that the Council has been drawn into matters not within its proper purview as a local planning authority. The responsibility for determining whether a bridleway is or has been used unlawfully under legislation other than that relating to planning lies elsewhere. Given the allegation in the reason for refusal to this effect, it is clear to me that the Council determined the application for reasons other than on its planning merits.

11. The Guidance explains that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. It has not done so in this case.

12. Having regard to the above I conclude that the Council acted unreasonably in refusing permission. The Guidance provides a list of types of behaviour which may give rise to a substantive award. The circumstances of this case may not fall neatly and wholly into one of the categories of examples provided, but as the Guidance clarifies, the list is not exhaustive.

13. The Guidance also provides that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to or does not offer evidence to counter the case. As already mentioned, the Council has not contested the application.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Wychavon District Council shall pay to Mr Lewis Albutt the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Wychavon 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.

G Powys Jones

INSPECTOR