



Costs Decision

Site visit made on 4 June 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2024

Costs application in relation to Appeal Ref: APP/K0940/W/24/3337167 Salterwath mast site, Shap, Penrith CA10 3QY

- 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 Lowther Estate Trust for a full award of costs against Westmorland and Furness Council.
 - The appeal was against the refusal of the Council to grant planning permission for dismantling telecommunications mast and erection of bird hide.
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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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The applicant has set out that there has been unreasonable behaviour because of the inaccuracies in the Council's appeal statement with regards to the first reason for refusal, and in the second reason for refusal, the Council has not determined similar cases in a consistent manner.
4. The appeal statement makes several references to the dimensions of a previously refused application¹ for a larger and two storey bird hide, as if it is the appeal case. This casts doubt on the accuracy of the report and the basis for the statement. Additionally, it mentions Class Q, a Lawful Development Certificate, and an appeal and reference to an application for a dwelling which has no association or apparent relevance to this site. These inaccuracies undermine the report and the assessment of the effects of the development on the character and appearance of the site and the surrounding landscape.
5. Whilst the Council has apologised, and confirms these errors, the applicant has had to in the process of preparing this appeal point out these inaccuracies so that the appeal is based on the facts of the case. This has resulted in unnecessary and wasted time in the appeal process. Therefore, unreasonable behaviour has been demonstrated regarding the first reason for refusal.

¹ Ref 22/0952

6. The Council admits that it did not consider the potential safety impact of the development for the previous scheme². However, it has refused this proposal because of serious safety concerns, despite the Highway Authority having no objection. Moreover, it states that only a post and rail fence separate the site from the motorway. Instead, I observed a metal fence between the site and the M6. Therefore, this assessment is both inaccurate and the overall reason rather vague, as there is limited substantive evidence regarding the numbers of visitors and how the bird hide would operate which would lead to safety concerns. Consequently, unreasonable behaviour has been demonstrated regarding the second reason for refusal.
7. Given all this, and my decision to allow the appeal, I find that the Council should clearly have granted planning permission and was unreasonable not to do so. The development was unnecessarily delayed, and the applicant has been put to wasted expense in the process. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has therefore been demonstrated and a full award of costs is justified.

Costs Order

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 Westmorland and Furness Council shall pay to Lowther Estate Trust, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the submission of this appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Westmorland and Furness 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.

M J Francis

INSPECTOR

² Ref 22/0952