



Costs Decision

Site visit made on 5 November 2024

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Costs application in relation to Appeal Ref: APP/R2330/W/24/3346109 Land opp. 18 Haslingden Old Road, Oswaldtwistle BB1 2DY

- 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 T Jamieson for a full award of costs against Hyndburn Borough Council.
 - The appeal was against the refusal of planning permission for erection of agricultural building without complying with condition 7 attached to planning permission 11/23/0440.
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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.
3. The application for costs relies to a substantial extent on whether the Council has acted unreasonably by imposing a condition on the original planning permission¹ which prevented the change of use of the building, effectively removing permitted development rights, and then refusing the subsequent application which sought to remove the condition².
4. It is established in the PPG and National Planning Policy Framework (NPPF) that the removal of permitted development rights should only be exercised in exceptional circumstances. The appellant has stated that the Council has acted unreasonably by effectively removing permitted development rights and subsequently refusing the section 73 application² to remove condition 7. I concur with the appellant with regard to the imposition of the condition and my reasoning for this is set out in the accompanying appeal decision.
5. However, the Council has set out in its statement the reasons for removing the condition. It is in their experience that clear justification for the agricultural building was not forthcoming in the original planning application. Furthermore, due to the speed of the application to remove the condition, which was submitted within around one month of the approval being received by the appellant, the Council has inferred that the appellant does not intend to use the

¹ Planning application number 11/23/0440 – approved with conditions.

² Planning application number 11/24/0121 – refused.

building for agricultural use in the long term. Therefore, the Council has sought to avoid the proliferation of such buildings by restricting them to agricultural use, effectively removing permitted development rights and unwanted changes of use to potentially more harmful uses in the future.

6. The appellant has stated that as part of the section 73 application that they provided the Council with previous appeal decisions which support their case, as there were similarities between them. These decisions³ formed part of the evidence provided as part of this appeal by the appellant. The decisions cover, amongst other things; conditions preventing the change of use of agricultural buildings to alternative uses such as dwellings and commercial uses and; Green Belt implications including the proliferation of redundant agricultural buildings. Both appeal decisions submitted support the appellant's case and are relevant to it. This is due to the issues covered, the conclusions reached and that they also provide consistency in approaches to decision making. However, the examples were from other Councils.
7. Based on the information provided by the parties, it is not evident that the appeal decisions were considered by the Council as part of the section 73 planning application as there is no mention of them in the planning officer's report. Furthermore, the appeals have not been referenced in the costs statement provided by the Council, despite the matter being discussed in the appellant's appeal and costs statement. Therefore, I have no option but to assume that the appeal decisions were not considered in the decision-making process for the section 73 application, and therefore was unsupported by an objective analysis.
8. The Council has not therefore, clearly considered all the supporting information provided by the appellant at the application stage. Even if the information had been considered by the Council and documented as such in the officer's report or costs statement, and the Council had then proceeded with an opposing view, it would have demonstrated clearly that all information had been considered as part of the planning application process.
9. Whilst I am of the view that the Council should not have removed permitted development rights as these were not exceptional circumstances, this is the right of the Council to impose such a condition and to subsequently defend this position through a section 73 application.
10. However, based on the evidence provided, I find that the Council has behaved unreasonably regarding the substance of the matter under appeal for having not clearly objectively analysed all supporting information provided with the section 73 application when it was being determined. This information supported the appellant's case. Thereby resulting in the appellant incurring wasted expense, as the result of the section 73 application may have been different and an appeal could have been avoided.
11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

³ Appeal Ref: APP/B2355/W/17/3188367 Allowed with conditions – 6 February 2018 & Appeal Ref: APP/B2355/W/17/3174775 Allowed with conditions – 1st November 2017

Costs Order

12. 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 Hyndburn Borough Council shall pay to Mr T Jamieson the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the 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.

N Duff

INSPECTOR