



Costs Decision

Site visit made on 20 March 2025

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2025

Costs application in relation to Appeal Ref: APP/F1040/W/24/3356576

Knights Lodges, Knights Lane, Bretby, Burton On Trent, DE15 0RT

- 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 Dean Willshee for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the erection of a leisure building with associated access, parking and landscaping without complying with condition 6 attached to planning permission Ref DMPA/2022/0836.
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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 application for costs relies to a substantial extent on whether the Council has acted unreasonably by preventing or delaying development which should clearly be permitted and acting contrary to, or not following, well established case law.
4. Having regard to preventing or delaying development which should clearly be permitted. Based on the evidence before me, it appears that dialogue was ongoing between the main parties during the application process, which resulted in a positive recommendation to the Council's planning committee.
5. Nevertheless, the Council's planning committee is a fundamental part of the Council's ability to discharge its planning function and is permitted to disagree with an Officer recommendation. I find that that Council's concerns regarding the highways implications of allowing the removal of the condition were not without merit, the Council has stated in its evidence that the members had local knowledge of the site and visited it prior to the committee meeting, therefore understood the limitations of the location of the site regarding connectivity. Accordingly, I do not consider that the development 'clearly' should have been permitted as Condition 6 restricted the use of the approved building, which was considered necessary by the Council at the time of the original planning application, and to remove it would intensify its use. Therefore, notwithstanding my decision on the appeal, I do not consider that the Council has behaved unreasonably in coming to a different decision of that of the Council's planning officer, resulting in unnecessary or wasted expense.

6. Turning to the applicant's assertion that the Council has acted contrary to, or not followed, established case law. The applicant put forward a fallback position which would prevent the implementation of a prior approval consent on a nearby site. This permitted the change of use of an agricultural building to a leisure building that would have similar functionality to that of the appeal site, albeit providing a different offering in terms of facilities. Due to this alternative route of gaining permission through prior approval, it would be able to operate unrestricted. The Council's planning committee were presented with the fallback position and concluded that they did not consider that it has a reasonable likelihood of being implemented, and therefore did not attract the weight the applicant intended it to, in the committee's deliberations.
7. I do not have sufficient evidence before me to conclude that the Council did not consider the fallback position or that they dismissed it entirely, rather, that they did not consider that it was likely to be implemented. This is a conclusion a planning committee is entitled to make as a decision maker. Whilst fallback positions can be attributed weight, the level of weight is down to the decision maker and fallback positions do not automatically demand high levels of weight to be attributed to them, nor do they automatically outweigh other concerns making a development acceptable.
8. For the reasons mentioned above, whilst I sympathise with the applicant due to the decision being contrary to that of the Council's planning officer recommendation. I am satisfied that the Council has not behaved unreasonably in concluding in the way it has through the Council's planning committee exercising its planning function.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

N Duff

INSPECTOR