



## Costs Decisions

Hearing Held on 25 September 2019

Site visit made on 25 September 2019

**by M Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

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### **Costs applications in relation to Appeal Ref: APP/L3245/W/19/3230826 Moston Grange, Junction Hermitage Lane to A49 Lee Brockhurst, Moston, Stanton Upon Hine Heath SY4 4LU**

#### **Application A**

- 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 Miss Anna Brown for a full award of costs against Shropshire Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the proposed erection of a rural enterprise dwelling of up to 100sqm to support the equestrian business as well as erection of dutch barn.
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#### **Application B**

- 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 Shropshire Council for a full award of costs against Miss Anna Brown.
  - The hearing was in connection with an appeal against the refusal of planning permission for the proposed erection of a rural enterprise dwelling of up to 100sqm to support the equestrian business as well as erection of dutch barn.
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#### **Decisions**

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

#### **Background**

3. The Planning Practice Guidance 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.

#### **Application A**

##### **The submissions for Miss Brown**

4. The appellants costs application was submitted in writing.

##### **The response by Shropshire Council**

5. The Council's response was made orally at the hearing.

6. The Council stated that it considered the contents of the report prepared by Reading Agricultural Consultants and that this was covered in the discussions at the hearing. Furthermore, the Council considers that it has engaged with the appellant during the appeal process.
7. The Council considered the application on the basis of the information that was submitted and remains of the opinion that there is no justification for a dwelling at the site.
8. It was also stated by the Council that despite numerous requests, the mortgage payment information of the appellant was not provided until it was presented at the hearing. There was also doubt as to whether the mortgage was paid by the business or was a personal mortgage. The Council considers that the basis of the costs claim is vague, and it has substantiated its case and considers there is no justification for an award of costs in this instance.

### **Reasons**

9. The applicant has stated that they drew the contents of the Reading Agricultural Consultants report to the Council following the refusal of the planning application and that little regard was had to this, which would have made the appeal avoidable. However, from the submitted information it is clear that the Council did consider the report and its contents but was of the view that the circumstances of the case set out in the report were different from that of the appeal case.
10. There is further reference to the reasons for resisting the proposal having changed from those within the reasons for refusal. However, both within the written submissions and at the hearing, the Council sought to support and amplify the reasons as stated on the decision notice.
11. The Council did suggest that there may be the possibility of converting existing buildings and this is linked to the concern that the needs of the enterprise could be served by other accommodation within the vicinity. The suggestion was based on the level of information that was submitted with the planning application. Whilst further information was submitted throughout the appeal, I am satisfied that the case put forward by the Council is consistent with the reasons as contained within the decision notice.
12. Whilst there is a contention that if the Council had engaged with the applicant, the appeal would be unnecessary, it is obvious that there is a clear difference of opinion between the parties. I am not convinced that further discussion on the matters would have led to the Council and the appellant reaching an agreement.
13. In my view, the Council satisfactorily substantiated and justified its case. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is therefore not justified.

### **Application B**

#### **The submissions for Shropshire Council**

14. The Council's costs application was made orally at the hearing.

15. The Council contends that a competent consultant would have advised that the existing operation is in breach of a planning condition, requiring that the site be used for personal use only, in order to safeguard the amenities of the locality. The Council is "astounded" that no application has been made for a Certificate of Lawfulness to establish a lawful use. No such application has been made.
16. There was confusion surrounding the account information, which was provided in a piecemeal fashion towards the end of the process. The agent has maintained that the policy is out of date and "slipped through the net". The policy is up to date and complies with the National Planning Policy Framework (the Framework).

### **The response by Miss Brown**

17. The appellants response was made orally at the hearing.
18. The decision had two reasons for refusal, these have not been substantiated. That there are houses within 5 miles of the site and that the business is not viable have not been substantiated. The previous permission that has been granted is not part of the consideration of this scheme and so has not been addressed by the appellant.
19. The policy of the Council is out of date; reference to policy "slipping through the net" an exact quotation of previous Inspector. No-one has noticed the divergence between policy and the Framework. The Council Officer was present when this comment was made. It was only referred to in the appeal, no issue is made of this comment and the Council has not taken this point on board. There is a difference of opinion between the parties which is not unreasonable.

### **Reasons**

20. Whilst the matter of the planning condition restricting the use of the site to a personal use is noted, it is not within the scope of this appeal to consider whether or not a Certificate of Lawfulness should be sought. As such, the lack of any such application is not unreasonable.
21. In respect of financial information, I note that much of the most recent information was submitted during the appeal in the form of an accountant's report and mortgage statements that were provided at the hearing itself. I note that the appellant does not consider that a financial assessment is necessary as part of the consideration of the scheme. However, the appellant is also aware of the Council's policy requirements as discussed in my appeal decision. I acknowledge that some accounts were submitted, but these were only up to 2016. No detailed accounts in respect of the years since this date have been provided, only total income figures. Whilst the appellants accountant has stated that this was not considered necessary, it is information that is pertinent to the financial viability of the business. As such, I consider that not providing complete, up to date financial information was unreasonable behaviour on the part of the appellant.
22. However, further information was provided prior to or at the hearing, and the Council had the opportunity to consider all of this information without the need for any delay in the appeal or adjournment of the hearing, which resulted in additional cost. Additionally, the provision of recent, detailed accounts would not have avoided the need for the appeal. Thus, there was no wasted or

unnecessary expense for the Council associated with the matter of the financial information.

23. Turning to the contention in respect of the consistency of the policy with the Framework. I accept that it was the professional opinion of the appellants agent that the guidance of the Framework should be considered principally. Whilst I have found that the requirement for a financial test is not inconsistent with the Framework, I have no reason to find that the stance taken by the appellant in this respect was unreasonable.
24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is therefore not justified.

*Martin Allen*

INSPECTOR