



Costs Decision

Site visit made on 13 October 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Costs application in relation to Appeal Ref: APP/L3245/W/20/3250951 Abbotsmoor Farm, Cefn-Y-Wern Junction to Haughton Farm Junction, Haughton, West Felton SY11 4HF

- 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 JC and MW Suckley for a full award of costs against Shropshire Council.
 - The appeal was against a refusal to grant approval required under a development order for the excavation and creation of land to form a farm reservoir.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party 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 basis for the claim is that the applicant considers that the Council refused to consider the detail of siting for an application for prior notification under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) because they misapplied an exclusion criteria in the use of that procedure, and determined the application in an inconsistent manner with other similar proposals.
4. As set out in my decision, the prior approval procedure for agricultural development as defined under Schedule 2, Part 6, Class A of the GPDO makes no provision for any determination to be made as to whether the proposal would be permitted development. In the case of an excavation, only the details of siting are up for consideration by the Council.
5. The options for the Council, as set out in Part 6, provide only for the outcomes that prior notification is necessary, or it is not. Only if notification within 28 days of receipt of an application by the Council of a determination that prior notification is required is received by the applicant, is the Council able to refuse the detail of siting.
6. I acknowledge that the Council took advice on the matter of A.1 (e) of Class A, however, as with my remit in the determination of the appeal, the matters

within the scope of the prior notification procedure are strictly limited. Accordingly, whilst the appellant's basis for the application of costs refers to the interpretation of criteria A.1 (e) of Class A, it was not open to the Council to determine the application in the manner it did. Although it is not unreasonable to make an assessment of the qualifying criteria under Class A of Part 6 and come to an opinion on them, for the reasons set out above, the Council has misdirected itself in its determination. The Council's approach was therefore procedurally incorrect.

7. I note that the applicant had made a previous application to obtain prior approval for a larger reservoir in the lead up to the application subject of the appeal and this had a similar outcome. Although, the Council advised that a planning application should be submitted for the proposed development, and it was also open to the applicant to seek a determination under s192 of the Town and Country Planning Act 1990, these procedures incur greater time and financial costs.
8. The fact that the proposal was reduced in area within the second application did not overcome one of the Council's previously stated concerns, however, the approach by the applicant was not a procedurally incorrect one and it had the effect of reducing the matters of contention. It was also made in the light of previous decisions by the Council for similarly sized reservoirs thus giving an expectation that the substantive matters were consistent with the prior approval of other comparable development.
9. Taking all of the above matters into consideration, I find the unreasonable behaviour arising from the Council's procedural error is contrary to the guidance in the PPG and the appellant has been consequently faced with the unnecessary expense of lodging the appeal.
10. For the above reasons an award of costs is justified.

Costs Order

11. 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 the Shropshire Council shall pay to JC and MW Suckley the costs of the appeal proceedings described in the heading of this decision.
12. 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.

R Hitchcock

INSPECTOR