
Costs Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

**Costs application in relation to Appeal Reference:
APP/Y2736/X/21/3284182**

Coulton House Farm, Coulton, Hovingham, York YO62 4NE

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is by Mr Paul Judson against Ryedale District Council.
 - The appeal was in relation to a Lawful Development certificate application for '*The erection of an extension to the existing building for the housing of livestock*'.
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Decision

1. The application for an award of costs is refused.
2. Planning Practice Guidance (PPG) states that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary loss and expense in the appeal process.

The application for costs and the reply to the Council's response

3. Although a LDC was granted it was not in the form which the appellant was seeking. It is considered that there was no proper reason why it was not granted in the form sought. Accordingly it is contended that the LPA acted unreasonably. This appeal should not have been needed; the LPA has acted unreasonably and their reasons given for granting it in this way does not stand up to scrutiny.
4. It is stressed that the LDC application related only to operational development and there is no dispute that the structure is lawful. The LDC should have been granted in the terms requested and there would have been no need for this appeal.
5. The LPA has misapplied fundamental principles of planning and established case law. It has failed to acknowledge that a building erected on agricultural land, which has become lawful with the passage of time, can be used for any agricultural purpose. It is contended that it has misapplied the case of *Sumner v SSCLG 2010*.
6. In that case although the building operations for the erection of a building became lawful after 4 years, the use to which it was put did not. The facts of *Sumner* are different to those in this case, as the use to which the building was put, in contrast to this case, was *not* the authorised use of the land on which it was built.
7. It was nevertheless cited by the LPA to justify the untenable position that the use of an agricultural building for the keeping of pigs, on land with a lawful and unrestricted use for agriculture, involved some form of 'change of use'. The appellant gave the LPA an opportunity to reconsider its position prior to determination but decision was issued, unreasonably restricting the use of the building.

8. For these reasons the LPA is considered to have acted unreasonably and this unreasonable conduct has necessitated this appeal and directly caused the Appellant to incur expenditure in the appeal process.

The Council's response to the application

9. The Appellant asserts that the LPA 'acted unreasonably when granting the Certificate in a form other than that sought by the Appellant.' The basis for this unreasonable behaviour is that the LPA 'misapplied fundamental principles of planning law and established case law'. The appellant's application is therefore based wholly upon the strength of their own legal argument.

10. As demonstrated in the LPA's appeal statement the decision to grant the LDC in the form as provided was well founded and, as a result, the costs application for costs should fail. Without prejudice to the above, even if there are disputing opinions over the interpretation of planning law, this does not mean the LPA have acted unreasonably in the appeal process and for the purposes of awarding costs.

11. Overall, it is considered that the LPA has demonstrated that its substantive argument, as set out in the previous correspondence with the appellant, is correct. It was entitled to amend the description of the development in the way it has done.

My assessment

12. Although the LDC was not in the form which the Appellant was seeking, as indicated in my appeal decision the LPA was entitled, under section 193(4) of the Act, to issue it in that form. Based on my conclusions in my appeal decision I do not consider that this amounted to unreasonable behaviour in relation to the appeal process.

13. Neither do I accept the appellant's contention that the appeal was not needed. The LDC was issued in the form prescribed by the appellant and the appeal was made against it. The appellant was clearly entitled to appeal and thus it was inevitable from that point that the appeal would have to run its course. It was, therefore, clearly necessary.

14. The LPA set out in detail the reasons why it was issued in that form and this is evident from the appeal submissions. There were clear and proper reasons why the LDC was granted for the operational development but not for the use to which the building was being put: the keeping of livestock, pigs. I have concluded in my appeal decision that, in my view, the Council's reasons for issuing the LDC in the form prescribed was sound and I disagree with the appellant's contention that the reasons do not stand up to scrutiny.

15. I also agree with the LPA that, despite disputed opinions over the interpretation of planning law, this does not mean the LPA acted unreasonably in the appeal process.

16. It follows that I do not consider that the LPA's actions in this appeal process were unreasonable. Nor do I consider that their behaviour has led to any unnecessary loss or expense for the appellant.

17. In dealing with this costs application I have taken into account all of the appeal and costs submissions made by the parties. However, none of these carries sufficient weight to alter my conclusion that an award is not justified. Nor is any other matter of such significance so as to change my decision.

Formal Decision

18. For the above reasons the application for costs is, therefore, refused.

Anthony J Wharton

Inspector