



## Costs Decisions

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by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 06/03/2024

Costs application in relation to Appeal Refs: CAS-02887-H1K1W9 & CAS-02965-R5P0H5

Site address: Rowan Tree Cottage, Countryman Court, Heol Tynewydd, Bedwellty, NP12 0BJ

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- The applications are made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
  - The applications are made by Mr Luke Briggs for full awards of costs against Caerphilly County Borough Council.
  - The appeals were against: (i) the refusal of planning permission for an agricultural shed, hardstanding and access track and the raising of ground levels and (ii) the refusal of a prior notification application for a steel portal framed shed.
  - A site visit was made on 16 January 2024.
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### Decisions

1. The applications for awards of costs are refused.

### Procedural Matters

2. Two awards of costs are sought by the applicant, which will be considered on their individual merits. Nevertheless, to avoid duplication I have dealt with the two together, except where otherwise indicated.
3. The Council did not submit a response to the applications for awards of costs. I have therefore dealt with the applications on this basis.

### Reasons

4. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The applications for costs have been made by the applicant on the basis that the LPA has been non-compliant with procedural requirements, has failed to substantiate its reasons for refusal and has incorrectly applied development plan policies to the prior notification application.
6. Although the applicant alleges that the LPA was aware of the justification for an agricultural building prior to its refusal of the prior notification application, I cannot say with any certainty what information the Council had in coming to its decision since I was

not party to any discussions or exchange of correspondence during the processing of the application. Be that as it may, the costs regime (with limited exceptions) applies to the appeal process and, as such, the question is whether the Council produced evidence to substantiate its reason for refusal. Rather than defend its reason for refusal, the Council subsequently accepted that sufficient information had been submitted to demonstrate that the development was reasonably necessary for the purposes of agriculture, thus meeting the requirements in Part 6, Class A of The Town and Country Planning (General Permitted Development) Order 1995 but, in doing so, also drew attention to its concerns regarding the siting of the building which had already been expressed in its delegated report. It therefore stands to reason that the appeal would have come into being in any event, albeit for reasons relating to the siting of the development. I do not dispute that concealing relevant evidence as part of the determination of an application could constitute unreasonable behaviour on procedural grounds but, in this case, I do not consider that it caused wasted or unnecessary expense in the appeal process.

7. Likewise, it is unfortunate that the Council did not share with the applicant the concerns of neighbouring residents as detailed in a letter of objection, and that it did not allow the submission of additional information to either allow the grant of planning permission or to limit the scope of its reason(s) for refusal. Nevertheless, these are matters for the Council in its determination of the planning application rather than falling within the remit of the Costs regime, particularly as these were not the main reasons for the appeal coming into being.
8. I also note that the Council's decision notice in relation to the prior notification application cited a failure to comply with development plan policies, even though the applicant was previously advised that they are not relevant to this type of application. Whilst the Council's decision notice is not entirely helpful in this regard, and could therefore constitute unreasonable behaviour, I am not convinced that this was the main basis on which the appeal was made such that it caused the applicant to incur unnecessary or wasted expense.
9. Furthermore, to my mind, it was the applicant's decision to make a prior notification application before going through the appeal process in relation to the refusal of planning permission, and thus incur the costs of doing so. As such, I do not consider this to be a cost that can be directly associated with the appeal process.
10. Turning to the applicant's concern that the Council's Landscaping Officer did not object to the proposed location of the building under a previous planning application but, instead, suggested additional planting / landscaping. The Annex is clear that planning authorities are not bound to adopt the professional or technical advice given by their own officers. However, they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice. That the Council's Landscaping Officer did not take issue with the siting of the building does not mean that the LPA was not entitled to do so in making its decision on the impact of the development, taking into account a number of other matters and reaching a different conclusion overall.
11. For the reasons given, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Section 12 Annex, has been demonstrated. The costs applications are refused.

*Melissa Hall*

INSPECTOR