



Costs Decision

Hearing held on 13 April 2010

by **Alan M Wood MSc FRICS**

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

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**Decision date:
20 April 2010**

Costs application in relation to Appeal Ref: APP/L3245/A/09/2117970 Karuna, Picklescott, Church Stretton, Shropshire, SY6 6NT

- 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 Mrs Merav Wheelhouse for a full award of costs against Shropshire Council.
- The hearing was in connection with an appeal against a refusal to grant approval required under a development order for a polytunnel.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Appellant

1. The Council should have identified that the proposal required full planning permission rather than proceeding with the prior approval procedure under the development order.
2. The issue of the classification of the road should have been identified by the Council at the time of the application.
3. It was the intention of the appellant that the polytunnel should be 25m from the road.
4. The Council accepted the application and issued a decision. It was only at the commencement of the appeal hearing that the error was identified. This has resulted in considerable costs to the public purse and to the appellant who has been intentionally or unintentionally misled.
5. The appellant already has a medical condition and suffers from stress and this process has involved additional stress.
6. The appellant only wishes to construct a polytunnel to grow vegetables and the outcome will lead to further delay and inconvenience.

The Response by the Council

7. The appellant has a duty to ensure that the nature of the application is correct.
 8. The Council receives a large number of applications and the Council relies on the applicants to check dimensions on plans as, in the same way, the Council does not check the legal title in respect of planning applications.
 9. The Council acted promptly as soon as the issue was discovered and did not seek to keep quiet in this regard.
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10. The Council has not acted in an incompetent manner in this matter.

Conclusions

11. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
12. Paragraphs B8 and B9 of the Circular relate to the procedures adopted by a planning authority when determining planning applications. Paragraph B8 indicates that allegations of mishandling of a planning application may be an indicator of unreasonable behaviour. Paragraph B9 states that the procedures adopted are generally a matter for the authority but the process followed may be open to criticism in a particular case.
13. Whilst I accept that there is an onus on applicants to make their intentions clear when submitting applications, I consider that the Council should have been more thorough in checking all of the criteria relevant to the application set out in Class A of Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as part of its validation procedures. I also acknowledge that the Council did make this matter known when it first became aware of it. However the timing was such that it did not prevent the appellant from having to prepare her case in respect of the appeal and to attend and be represented at the hearing.
14. The Council's omission in respect of failing to properly identify the classification of the road which borders the site to the west and north-west resulted in the hearing of the appeal case having to be aborted as the application procedure followed was not the correct one.
15. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has been demonstrated and that a full award of costs is justified.

Formal Decision and Costs Order

16. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Shropshire Council shall pay to Mrs Merav Wheelhouse the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
17. The applicant is now invited to submit to Shropshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Alan M Wood

Inspector