

## Costs Decision

Site visit made on 30 August 2016

by Rachel Walmsley BSc MSc MRTPI

**Decision date: 23 September 2016**

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**Costs application in relation to Appeal Ref: APP/T3725/W/16/3149781  
Warboro Farm, Henley Road, Hampton on the Hill, Warwick CV35 8QX**

- 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 Mr Norman Wyatt for a full award of costs against Warwick District Council.
  - The appeal was against the refusal of the Council to grant planning permission for the conversion of a brick barn into a single dwelling.
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### Decision

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

### Reasons

2. The application is for a full award of costs in relation to the appeal. I have considered this application in light of the Planning Practice Guidance (the PPG). 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.
  3. The Council identified that it was the proximity of the proposed new dwelling to surrounding buildings and uses that was of concern. However no details to explain why proximity translated into noise and odour being a potential problem were provided, and no evidence was referred to, to substantiate the Council's reason for refusal overall. Concerning odour specifically, the Council stated that odour from the agricultural activity would cause harm, with no further explanation or evidence to support this claim.
  4. In addition, I note that the Council's Environmental Health Officer (EHO) considered that there was the 'potential' for residents to suffer from noise and odour. When refusing the application, the Council stated that there would be 'significant potential.' There was no explanation as to why the Council considered the development to have 'significant potential', as opposed to 'potential' harm.
  5. In all, therefore, I find that the Council failed to show within its reasoning that it had reasonable grounds for refusing the application. On this basis, the Council acted unreasonably, refusing the proposal on grounds unsupported by any objective analysis or evidence. This resulted in unnecessary and wasted expense incurred by the appellant in the form of the planning appeal.
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6. I note that the EHO commented on the proposed development, on the same day that the Council issued its decision. This allowed insufficient time for the Council to discuss with the applicant the EHO's concerns and the potential to apply conditions to mitigate any harm. I am aware that the Council have since considered that a condition to mitigate harm would be reasonable. Whilst it may have been possible to negotiate a means to mitigate harm within the course of the application, the timescales between the EHO commenting and the Council issuing its decision did not allow for this. Whilst the National Planning Policy Framework (the Framework)<sup>1</sup> encourages local planning authorities to look for solutions, the local planning authority is also required to make a decision on the proposal as quickly as possible and in any event, within the statutory time limit<sup>2</sup>. Whilst I sympathise with the applicant that more time may have meant that a refusal could have been avoided, I find that the Council did not act unreasonably in deciding the application within the statutory timescale and informed by the comments of the EHO.
7. Following the planning decision, the appellant engaged with the Council; the last of these discussions were on 3 March 2016 when the applicant sought confirmation on whether the Council would approve a repeat prior determination application to save the time and expense of an appeal. With no subsequent correspondence from the Council, an appeal was lodged on 5 May 2016. Taking into account the limited resources of the Council and the advice that had been given post-decision, and whilst I sympathise with the applicant regarding the lack of response since March 2016, I cannot consider that the Council acted unreasonably procedurally.
8. However, I find that unreasonable behaviour relating to the planning substance of the Council's decision resulted in unnecessary and wasted expense. For this reason a full award for costs is justified.

### **Costs Order**

9. 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 Warwick District Council shall pay to Mr Norman Wyatt, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Warwick District Council, to whose agents 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 Senior Courts Costs Office is enclosed.

*R Walmsley*

Inspector

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<sup>1</sup> Paragraph 187

<sup>2</sup> Paragraph 001: Reference ID: 21b-001-20140306