

Costs Decision

Site visit made on 1 November 2016

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 14th November 2016

Costs application in relation to

Appeal A - Ref: APP/X1355/W/16/3154873

Appeal B - Ref: APP/X1355/W/16/3154874

Appeal C - Ref: APP/X1355/W/16/3154875

Barns 2, 3 and 4 Todhills Farm, north-west of Long Lane (opposite Primrose Hill), near Bishop Auckland, County Durham, DL14 8BB

- 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 Alan Etherington AET Limited for a full award of costs against Durham County Council.
 - The appeals were against refusals to grant approval required under Schedule 2, Part 1, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the proposed change of use of agricultural building to 1 no. dwelling house (Use Class C3).
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (the Guidance) advises that where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 3. The Guidance states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing planning applications. Examples of these include preventing or delaying development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. Another, is failure to produce evidence to substantiate each reason for refusal on appeal including vague, generalised assertions about a proposal's impact which are unsupported by objective analysis.
 4. The appellant considers the Council to have relied upon the requirements of internal consultees without considering if they were reasonable and to have sought costly surveys when they were not needed. In terms of noise and disturbance, I have found that no harm is likely to arise from the nearby brickworks, landfill site or operation of the wider farmyard and identified no need for an acoustic report to be submitted. Whilst the Council refers to the potential for traffic movements to impact on the living conditions of future
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occupiers, no further details as to their concerns are provided and in practical terms little evidence is provided as to what the impact of this on the proposed dwellings would be. As such, I am not convinced that this reason for refusal has been substantiated or supported by objective analysis.

5. With regard to contamination, I have found that a condition to ensure that appropriate investigations are carried out (and remediation undertaken if necessary) would be sufficient to address any contamination risks on the site. Another example of the type of behaviour that may give rise to a substantive award against a local planning authority also referred to in the Guidance is refusing planning permission on a planning ground capable of being dealt with by conditions (where it is concluded that suitable conditions would enable the proposed development to go ahead).
6. As such, I find the Council's behaviour to have been unreasonable with regard to both these planning grounds. That said, I have considered whether this behaviour has caused any unnecessary expense to the appellant. In this instance, I am conscious that no extra survey work was undertaken with regard to these matters, and there are other reasons for refusal relating to protected species and design and external appearance.
7. Bats are a European protected species that have to be taken into account even though protected species are not specifically referred to in Class Q of the GPDO. Given the nature of buildings, the site and its surroundings I consider the Council's requirement for a survey regarding bats and birds to be reasonable and proportionate. However, a further example of unreasonable behaviour on the part of the Council as described in the Guidance is not reviewing their case promptly following the lodging of an appeal, as part of sensible on going case management.
8. A Bat and Barn Owl Report was submitted with the appeal. Although the Council advises it did not receive it, it is clear from its appeal statement that the Council was aware of its existence and could have made efforts to get hold of a copy. As such, the Council failed to review its case when the appeal was lodged. However, the Council has now commented on the report and accepts that no bats or barn owls have been found to utilise the buildings. Moreover, since the survey was required at application stage and it would have been necessary to produce it in any event, the appellant has wasted no expense in this regard.
9. In terms of design and external appearance, although I appreciate that the prior approval regime is intended to be a simple process that cuts through red tape and encourages development, the GPDO is nevertheless clear that these matters fall to be considered. For the reasons set out in my Appeal Decisions I have found the design and external appearance of the proposals would be unduly harmful, and do not regard the design concerns set out by the Council to be spurious.
10. As such, I am content that the appeals could not have been avoided and accordingly the appellant's expense in mounting the appeals was not wasted.
11. The appellant argues that the Council did not enter into a dialogue with his agent in relation to the applications, or advise him of the extra requirements raised by consultees in good time, or at all. On the other hand, the Council advises that the start letter sent in relation to the applications explains the

Council's policy as to how information is published on the internet. Additionally the case officer advised the appellant at the site visit of the existence of consultation responses on the Council's website, and particularly the need for the points raised to be addressed. This was almost a month in advance of the determination of the applications and I have seen nothing to suggest that there was any delay in the comments being made available on the Council's website.

12. Whilst I appreciate the appellant's view that his agent should have been sent direct web links to the comments, I am content that they were made available. I also note that the Council's email to the appellant initially advising that the applications were invalid also raised some of the Council's concerns at that early stage. Other emails submitted as part of the appeal also indicate that the matters identified as main issues in my Appeal Decision were discussed between the parties in advance of the applications being determined.
13. As such, I see no reason why the appellant should not have been aware of the Council's concerns or have had insufficient time to respond to them. Whilst the Council did not allow an extension of time, I understand that the prior approval process requires the Council to issue a decision within 56 days and does not allow for an extension of time. Taking into account all these factors, I do not regard the Council's behaviour to have been unreasonable in these respects.
14. Bringing matters together, overall I am satisfied that the Council has not prevented or delayed development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations.
15. I therefore conclude that whilst some aspects of the Council's behaviour have been unreasonable, the appellant's costs in mounting the appeal were not unnecessarily incurred. For the reasons given above, the application for an award of costs is thus refused.

Elaine Worthington

INSPECTOR