
Costs Decisions

Site visit made on 9 May 2016

by L Gibbons BA (Hons) MRTPI

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

Decision date: 23 November 2016

Costs application A in relation to Appeal Ref: APP/L1765/W/15/3141585 Sutton Springs, Bullington Lane, Sutton Scotney, Winchester, Hampshire SO21 3RA

- 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 Nigel Jackson for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of the Council to grant approval under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Costs application B in relation to Appeal Ref: APP/L1765/W/15/3141592 Sutton Springs, Bullington Lane, Sutton Scotney, Winchester, Hampshire SO21 3RA

- 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 Nigel Jackson for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of the Council to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015.
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Decisions

Application A

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

Application B

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

Reasons

3. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Application A

4. The planning application sought the removal of two conditions for an agricultural barn which had already been built. Condition 1 relates to preventing further internal and external alterations to the building without prior
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written consent of the Council. Condition 2 relates to the use of the building for agricultural purposes and that it should not be used for residential development.

5. The applicant submits that the Council has prevented development which should have clearly been permitted having regard to the direction of national policy and legislation and other material considerations. The Council refer to Policies DS1 and MTRA4 of the Winchester District Local Plan Part 1 Joint Core Strategy (JCS). I have found that these policies are broadly consistent with the National Planning Policy Framework. In this matter, the Council were not acting unreasonably in relying on these policies. I also consider that the wording of the reason for refusal is clear.
6. The applicant considers that the Council failed to produce justifiable reasons for refusal. No appeal statement was submitted by the Council instead reliance is placed on the officer's report. The officer's report refers only briefly to the removal of condition 1 and that change to the building could make it more domestic in appearance. However, the officer's report does clearly refer to the six tests for conditions as set out in the Planning Practice Guidance.
7. In respect of other considerations particularly housing land supply and legislative changes been made in respect of the General Permitted Development Order (GPDO) were raised in the applicant's Planning Statement that accompanied the planning application. Whilst housing land supply is referred to in their response to the costs application there is no discussion of the implications of housing supply in the officer's report. In terms of the recent changes to the GPDO, I note that in this case the Council mainly rely on the conclusions of a previous Inspector's costs decision. To some extent the officer's report also quotes text from a previous officer's report which dealt with the original application for the agricultural building.
8. Nevertheless, as set out in my appeal decision I found that the effect of removing condition 1 would have a harmful effect on the rural character of the area. I also concluded that condition 2 is reasonable and necessary having regard to national and local planning policy concerning development in the countryside, taking into account the other considerations referred to by the applicant. The applicant's evidence on these matters was a necessary part of the appeal process.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Application B

10. The development proposed was for the change of use the ground floor of the barn from Agricultural to dwelling. The first issue addressed whether conditions 1 and 2 of the original planning permission were effective in removing the permitted development rights under Class Q of Part 3 of Schedule 2 to the GPDO. I found that there is nothing within condition 1 which would exclude the change of use of the building. I note that the applicant considers that the inclusion of condition 1 in the reason for refusal could have been raised earlier by the Council. However, the consequences of this are not explained further by the applicant in the application for costs.

11. The applicant considers that the Council have not offered any satisfactory reasons as to why condition 2 should preclude the operation of the GPDO. I note that the applicant refers to the Council seeking to rely on the conclusions of a previous Inspector's references in 2015 in relation to 'other matters' and a costs decision¹. The costs decisions do refer to the wording of condition 2 as being clear and precise. However, I acknowledge that in the appeal and costs decisions the Inspector clearly states that the wording of the condition was not a determining factor and I consider the matter was not settled at that point. The officer's report does not address the case law examples included the planning statement submitted by the applicant as part of the application².
12. That said, I consider that the Council's officer report does set clearly set out the concerns in relation to condition 2. I am satisfied that it adequately explains the basis for the planning officer's judgement and that the Council's assessment in this matter has not prevented or delayed development which should have clearly been permitted. As set out in my appeal decision I concluded that condition 2 is effective in removing the permitted development right under Schedule 2, Part 3, Class Q of the GPDO. The applicant's evidence on these matters was therefore a necessary part of the appeal process.
13. The Council's second reason for refusal relates to whether the site was solely in agricultural use, as part of an established agricultural unit, within the applicable timeframes. I concluded that the relevant part of the building was part of an agricultural trade or business on 20 March 2013.
14. The Council's view was that the land within the curtilage of the building has not been solely in agricultural use. This concern particularly relates to the first floor of the building which was in residential use from 2009 although I note the officer's report refers to uncertainty regarding whether the sole use requirement can be applied to a proportion of the structure. The Council do not indicate which area they were considering in terms of the curtilage. The applicant confirmed that the change of use of the ground floor was being applied for and is clearly set out in the description of development. In respect of the curtilage, I agreed with the applicant and considered it should be related to the lawful use of the building which is an agricultural use.
15. In respect of the ground floor use, the 2015 appeal decision considered the change of use for the whole building including the first and ground floor. The Inspector in that case concluded that the wider site was in agricultural use on the relevant date although the first floor of the building was not. The Inspector also noted that there was no dispute that the ground floor was in use for fish processing within the relevant time frames.
16. The applicant sought to narrow down the issues considered at the appeal in respect of the definition of the site and building. This was done so in correspondence with the Council dated 23 November 2015. The Council's reply indicates that they did not agree with the applicant's interpretation although I consider there is very little difference between the conclusions here and the officer's report. The letter from the Council additionally raises concerns that the ground floor may not have been in agricultural use on the relevant date. However, this was a matter clearly dealt with in the 2015 appeal decision.

¹ APP/L1765/W/15/3005316

² Planning Statement, Keystone Law September 2015

17. The applicant replied with a subsequent letter on 2 December 2015 in respect of the definition of the curtilage and the agricultural use of the site. There does not appear to be any further communication from the Council following that. I accept that the Council do not have to agree with the applicant. I also understand that there is complex planning history associated with the construction of the agricultural barn. However, the Council did not provide an appeal statement and relied on the officer's report which was drafted before the correspondence took place.
18. There is nothing to indicate that the Council have reconsidered the matter of the building and its curtilage and the 2015 appeal decision since the final letter from the applicant. There is no evidence presented by the Council in relation to the agricultural use of the ground floor. Despite the history of the appeal site, this is a matter which seems to me was capable of being resolved. I therefore consider that the Council acted unreasonably and consequently caused unnecessary cost to the applicant having to address this issue at the appeal.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has been demonstrated and that a partial award of costs is justified.

Costs Order

19. In the 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 Winchester City Council shall pay to Mr Nigel Jackson, the costs of the appeal Ref: APP/L1765/W/15/3141592 relating to the second reason for refusal, such costs to be assessed in the Senior Courts Office if not agreed.
20. The applicant is now invited to submit to Winchester City 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 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 Office is enclosed.

L Gibbons

INSPECTOR