
Costs Decision

Site visit made on 25 April 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date:

**Costs application in relation to Appeal Ref: APP/R0660/W/17/3169833
Honeysuckle Cottage Farm, Heatley Lane, Broomhall, CW5 8BA**

- 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 & Mrs P Hollinshead for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for the retention of an agricultural building incorporating half mezzanine floor.
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Decision

1. The application for a full 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. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay. Examples of behaviour which may lead to an award of costs against the local planning authority are also set out in the Guidance. These include failure to produce evidence to substantiate each reason for refusal on appeal.
 4. The appellants consider that the Council has alleged the unauthorised use of the appeal site for commercial truck sales without any evidence to support this claim. They consider that the delay in getting a decision in relation to the appeal building has had knock on effects on the viability of their future plans.
 5. The Council's initial concerns in relation to a truck sales operation from the site are raised in its email of 26 September 2016. Notwithstanding that the appellants are employed at a truck sales business and that permission was granted in 1993 for the parking of an HGV at the appeal site, the Council has not explained its concerns in this regard. I note the appellants' view that they tried to speak to the Council to clarify this matter, both directly and through their agent, but with no success. I have seen no further response from the Council on this matter. As such, I am unaware of the basis of the Council's concerns in this regard and have not seen any evidence to demonstrate that the site is being used as a truck sales business.
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6. This being so, I appreciate the appellants' concern that the Council has not substantiated its concerns in this regard and I consider the Council's behaviour to have been unreasonable in this respect. Nevertheless, I must also consider whether this unreasonable behaviour has caused the appellants to incur unnecessary or wasted expense in the appeal process.
7. Notwithstanding the issues raised in relation to truck sales, it seems to me that Council's concerns in relation to the appeal scheme primarily relate to a lack of evidence to establish that the building is required for agriculture. This arises from the Council's suspicions that the site overall is not being used as an agricultural business.
8. The planning application that is the subject of this appeal follows a previous application to retain the appeal building that was made in 2015. That application was withdrawn because the Council considered insufficient information had been provided specifically to establish that the use of the land/building was required for, or ancillary to, the use of the land for agricultural purposes. Correspondence from the Council at that time refers to the lack of a detailed business plan and the worry that the appeal site had a hobby farming use rather than an agricultural one. The Council continued to request information to support the subsequent application that is the subject of this appeal and refers to the lack of evidence to prove a working agricultural venture at the site.
9. Additionally, the Council refers to enforcement action in relation to the existing agricultural storage building on the site (that was constructed under permitted development rights) and its surroundings. It cites the recent issuing of a Planning Contravention Notice which relates to the change of use of that existing building to a domestic use, the unauthorised erection of a stable block, along with the material change of use of the land from an agricultural to a domestic use and the keeping of horses.
10. Those matters are not part of the scheme before me. Nevertheless, in this overall context, I have some sympathy with the Council's concerns regarding the agricultural use of the wider site and buildings and the implications of that situation for the appeal scheme.
11. As set out in my Appeal Decision, I am mindful that the National Planning Policy Framework supports the sustainable growth and expansion of all types of business and enterprise in the rural areas, regardless of their size or profitability. I have come to a different view to the Council and found that the appeal building is required for agricultural purposes. I have also concluded that any alternative use of the appeal building, as feared by the Council, could be precluded by the imposition of a planning condition. Even so, for the reasons given, I appreciate the Council's concerns in this instance and am content that it has substantiated its position, with some level of objective analysis and reference to the development plan, such that the reason for refusal stands up to scrutiny on the planning merits in this case.
12. The appellants consider there to have been a lack of communication from the Council during the consideration of the application. On the other hand, the Council refers to some confusion as to whether correspondence should be addressed to the appellants directly or via their agent. Notwithstanding this situation, I am content that the appellants were aware of the Council's particular concerns in terms of the agricultural justification for the building.

13. Thus, on balance, I am not convinced that the appeal could have been avoided, and overall am satisfied that the Council has not prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.
14. I therefore conclude that, whilst some elements of the Council's behaviour have been unreasonable, overall the appellants' costs in mounting the appeal were not unnecessarily incurred. Consequently, for the reasons given above, the application for a full award of costs is refused.

Elaine Worthington

INSPECTOR