
Costs Decision

Site visit made on 8 November 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 4th December 2017

Costs application in relation to Appeal Ref: APP/J1860/W/17/3179919 Former Milking Parlour, Lombard Tree Farm, Welland Road, Hanley Swan, Worcester WR8 0EJ

- 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 J Drinkwater for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for conversion of existing agricultural building to a single dwelling house.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. Part of the applicant's statement refers to the submission of a second prior approval notification to the Council following the refusal of that before me. For the avoidance of doubt, it is only unreasonable behaviour and wasted expense associated with the appeal process that is within the scope of the costs regime and my decision.
4. The applicant contends that the Council acted unreasonably in terms of refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in the appeal being avoided altogether, or the issues to be considered would be narrowed, thus reducing the expense associated with the appeal. They also consider that the Council has failed to substantiate their reasons for refusal.
5. In terms of the first issue, the applicant contends that the Council did not provide sufficient opportunity for them to provide additional information relating to the use of the other agricultural buildings on the site prior to refusing the notification. The evidence before me would suggest that contact highlighting the Council's concerns over the proposal was not made until very late in the process.
6. I recognise that the Council is required to make a decision within 56 days and that the Town and Country (General Permitted Development)(England) Order

2015 makes provision for situations where the developer has provided insufficient information for the authority to establish whether the development complies with any conditions, limitations or restrictions. Nonetheless, if the Council had had any concerns over the use of the other agricultural buildings on the site following its site visit, then there appears to have been sufficient time to request that information before the point at which they did, which was late in the afternoon of the day prior to the decision being issued.

7. However, it would appear that the second notification was supported by similar evidence put to the appeal. While the second decision is outside the scope of the appeal, the fact that this was also refused is suggestive that even if the applicant had been asked for the evidence earlier it would not have resulted in a different decision. Even if I were to conclude that the actions of the Council were unreasonable, there must also be evidence of unnecessary or wasted expense as a result. Based on what I have before me, I am not convinced that this information would have resulted in the notification being approved or the appeal being averted. As such, I do not consider there has been any unnecessary or wasted expense relating to the appeal process as a result of the approach of the Council.
8. The applicant has also asserted that the Council has altered its stance on the proposal insofar as the reason for refusal related to a lack of information only. The applicant argues that the Council's case has essentially changed from there 'could' be harm to there 'would' be harm and that this necessitated a change in the evidence provided. In my experience, it is not unusual when a reason for refusal relates to there being insufficient information for the appellant to seek to address this as part of the appeal process. In cases where the Council are then satisfied with what has been submitted, this may lead to a situation where the reason for refusal is not contended. This is not the case here.
9. The applicant's statement of case seeks to address any areas of deficiency and provide assurances that the development would not result in the potential effects alluded to in the decision notice. The Council has responded to the appeal statement and concluded that the additional evidence does not provide them with them with sufficient comfort and, as a result, they have concluded that the proximity of the agricultural buildings would cause harm. On this basis, it is unclear how else they could have responded to the applicant's case. The reason for refusal is quite clear about the Council's potential concerns. There cannot be any reasonable inference from this that all that is required for approval is for additional information to be submitted without there being any critical analysis of whether it is sufficient to resolve their concerns. I do not therefore consider the Council's approach to be evidence of unreasonable behaviour, rather it is the logical result of responding to the applicant's appeal statement.
10. The applicant also argues that the Council has failed to substantiate its reasons for refusal. This is particularly in relation to why the Council disagreed with the comments from Worcestershire Regulatory Services (WRS). While I recognise that WRS did not raise any objections, there is nothing to suggest that the local planning authority are not able to come to their own conclusions as to the impact of a development based on their own observations of the site and the information before them.

11. The matter of whether a development would harm the living conditions of an occupant is essentially a planning judgement. The officer report included reference to the comments of the WRS and there is nothing to suggest these were not considered in the planning balance. The statement of case clearly sets out what the concerns of the Council are and why the information provided does not provide sufficient comfort. Whilst I may have come to a different overall conclusion, I do not consider that there is any evidence of unreasonably behaviour in the Council's attempts to substantiate their decision.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Lee

INSPECTOR