The Planning Inspectorate

Costs Decision

Site visit made on 16 July 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2019

Costs application in relation to Appeal Ref: APP/N4720/W/19/3225547 None Go Bye. Old Otley Road, Leeds LS18 5HZ

- 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 Rushworth for a full award of costs against Leeds City Council.
- The appeal was against the refusal to grant approval required under a development order for change of use from agricultural to registered nursery.

Decision

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

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 appeals process.

3. The applicant's claim is based on two main arguments. Firstly, the Council's view that the proposed nursery would be adjacent to a building used for keeping livestock was erroneous and should not have led to a conclusion that the building subject to the application was unsuitable for the intended use.

4. Secondly, that the Council misinterpreted the test in the Town and Country Planning (General Permitted development) (England) Order 2015 (the GDPO) of whether the location or siting of the building would make it impractical or otherwise undesirable for the proposed use as a registered nursery.

5. With regard to the first point, the plans submitted with the notification clearly referred to the adjoining building as 'livestock barn'[1] . However, the Prior Notification Statement referred to the building as 'dilapidated' and stated that 'the proposed use will sit alongside a farm shop, a children's farm and, at a slightly more remote distance, a collection of fishing lakes'[2]. The correspondence between the applicant's agent and the planning officer prior to determination was limited, and did not cover the matter of the use of the adjoining building. If the planning officer considered that the proposal would sit in the midst of a working farm, with all the attendant risks that would pose, but given what was said on the matter in the planning statement, it may have been

[1] Existing floor plans ref. S336 PD 003
[2] Planning Statement – Prior approval for the change of use of an agricultural building to a registered nursery at None Go By – paragraph 4.12 The planning statement alone provided a good indication of the applicant's intentions.

considered reasonable to have sought clarification from the applicant as to the intended future use of the adjacent building. However, such applications for prior approval must be determined within an 8 week period, unless a longer period is agreed, and the onus is usually on an applicant to provide the information required at the outset.

6. On the second point, the PPG provides clarification of the meaning of the term 'impractical and undesirable' in the GDPO[3]. However, that guidance relates to changes of use of a building from agricultural to residential use, not use as a nursery. The applicant has provided case law to support his assertion that any reasonable reading of the PPG would see the comments made in relation to 'impractical and undesirable' and residential change of use as equally applicable to other parts of the GDPO where the same term is used. However, the case[4] provided deals with the application of the PPG to residential notifications (Part Q) and not nursery use (Part S).

7. I am therefore not persuaded by the applicant's argument that the meaning imparted by the PPG to impractical and undesirable should have been taken as the basis for the Council reaching a different conclusion in the case of the appeal proposal.

8. However, the response of the Transport Development Services officer (TDSO) raised no objection to the proposal and on the matter of the accessibility of the location clearly advised that in view of the nature of the application there were no grounds for objection. There was a response from a Councillor that took a different view to the issue of the suitability of the location. However, the planning officer report provides no explanation as to why the comments of the TDSO, an important internal consultee, were not taken into account in determining the application on this point and instead the perceived unsuitability of the location was used as a reason for refusal.

9. The PPG is clear that costs cannot be claimed for expenses incurred as part of the determination of a planning application. However, actions at the time of the planning application can be taken into account if the applicant has proceeded to make an appeal.

10. The local planning authority may be at risk of an award of costs where it has been found to have prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. In this case the Council's reasons for refusal were not supported by an objective analysis of the application before it. Whilst I do not find the Council's misunderstanding of the applicant's intentions with regard to the use of the adjacent building to be unreasonable, with regard to the accessibility of the location it did not have regard to the comments of its own internal consultee that this was not a matter which should be taken into account in such an application. Had it done so it should have reached a different conclusion.

[3] Planning Practice Guidance Paragraph 109 Reference ID 13-109-20150305
[4] East Hertfordshire District Council and Secretary of State v Sue Tepper [2017] EWHC 465 (Admin)

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 the Leeds City Council shall pay to Mr Nigel Rushworth, the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to the Leeds 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 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.

Tim Wheeler

INSPECTOR