The Planning Inspectorate

# Costs Decision

Site visit made on 9 September 2019

**by E Symmons BSc (Hons), MSc**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 November 2019**

**Costs application in relation to Appeal Ref: APP/M0933/W/19/3231816 Highfield Farm, Great Urswick, Dalton in Furness, Barrow in Furness LA15 8JG**

- 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 Liam Dixon for a full award of costs against South Lakeland District Council.
- The appeal was against the refusal an application for planning permission for a change of use from redundant agricultural building to use for vehicle bodywork repairs and associated mechanical repairs (Use Class B2).

## Decision

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

## Reasons

2. The Planning Practice Guidance[1] (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. These grounds may be procedural or substantive.

*Substantive grounds*

3. The applicant submits that the Council acted unreasonably in determination of the planning application. Nine assertions are raised which I will consider in turn.

*Issue 1*

4. *The Council failed to acknowledge the possibility of access to the site by public transport and walking from nearby Dalton in Furness.* There is disagreement between the parties regarding the relative walking distances and feasibility of this means of travel. The Officer Report considered that the proposal was in an unsustainable position and in their opinion, there was no feasible pedestrian or public transport access due to the distances involved. Although no further clarification of this point was provided within the Officer Report, their planning opinion was clear and not unreasonable.

[1] Planning Practice Guidance – Appeals. Published March 2014.

*Issue 2*

5. *The Council considered that the applicant did not demonstrate an essential requirement for this location.* The Council's opinion was that the exception clause within Policy CS1.2 of the South Lakeland Core Strategy[2] (Core Strategy) referring to use of an existing building was not engaged as they did not, in their planning judgement, consider the proposal appropriate. This triggered the requirement to assess whether or not there was an essential need for this location. This approach may differ from that within the associated appeal however, it was not unreasonable.

*Issue 3*

6. *The Council inaccurately asserted that the development would generate regular movements of large commercial vehicles.* The Officer Report clearly states that the Council were considering both the proposal before them and other uses within use class B. I acknowledge the appellant's contention that they only added reference to a B2 use to their proposal's description at the Council's request. However, the Council determined the application on this basis. Therefore, with respect to the development before the Council at the time of their determination of the application, this approach was not unreasonable.

*Issue 4*

7. *The public footpath crossing the adjacent field was considered to be affected by the development.* Two consecutive comments were submitted by the Highway Officer. In the first, reference was made to an earlier similar proposal for "a change of use from agricultural building to a car spray booth". This response stated that they had no objections to the scheme. Within their second response they were prompted to comment on an unrestricted B2 use, which is what was before the Council. In their professional opinion they concluded that a B2 use would harm Footpath 580012 and it is not unreasonable that the Council upheld this opinion. The appellant did not incur additional expense as both comments were before them when preparing their appeal statement.

*Issue 5*

8. *The Council considered that the neighbouring properties would be affected by the proposal however, this view was not supported by the comments of the Environmental Protection Officer*. The Environmental Protection Officer did raise concerns about a general B2 use as did the Council when referring to this issue in their Officer Report. The Council's statement is therefore accurate. Additionally, the Council was correct to assess the potential impact of the proposal on Highfield Farm, despite it being the Appellant's parental dwelling. This approach was not unreasonable.

*Issue 6*

9. *The LPA ignores the NPPF requirement for LPA's to cooperate by suggesting that the proposal was unacceptable as the appellant did not live within the same district and the business was not established*. The appellant has linked the Council's concerns regarding assessment of the sustainability of the proposal within the context of Policy CS1.2 of the Core Strategy with their duty to cooperate with applicants. These two points are unrelated. With regard to

[2] South Lakeland Local Development Framework, Core Strategy. Adopted October 2010.

the assertion that the Council failed to cooperate, other than the issue relating to potential acceptability of the scheme should conditions be applied, which is covered under issue 7, no other evidence is before me substantiating this claim. I therefore have no evidence of unreasonable behaviour.

*Issue 7*

10. *No reference was made to the fact that the matters could be dealt with by planning conditions.* The Council had a fundamental planning objection to the principle of the proposal. As such, although conditions were proposed by the appellant, they were not considered to address this issue. A condition to limit the proposal to one specific development within use class B was not considered enforceable. Although the appeal decision associated with this case may not agree with this view, the Council, in exercising its planning judgement was not unreasonable.

*Issue 8*

11. *The Council did not consider the effects of a nearby development which the appellant considered relevant.* I have no evidence before me to suggest that the appellant raised this issue with the Council, nor has the Council addressed this within their Officer Report. Each application must be determined on its own merits and it is unlikely that the Council would have altered its fundamental objection to this proposal whether or not this example have been fully considered. Their approach was therefore not unreasonable.

*Issue 9*

12. *The DM policies accompanying the questionnaire were not adopted at the time the application was determined.* The Council determined the application within the context of the Core Strategy which was, and still is, relevant. During the appeal process the South Lakeland Local Plan Development Management Policies[3] 2017 (DMP) was adopted. The emerging policies were shown within the Officer Report and although they did not carry full weight the appellant had the opportunity to comment upon them. However, as no Statement of Case was submitted the Council did not relate these, now adopted policies to the reasons for refusal. Additionally, submissions within the Council's Appeal Questionnaire, which was submitted after adoption of the DMP, did not update the parties on the revised status of the DPD. This was unreasonable and following my own clarification with the Council on the status of the DMP, the appellant incurred additional expense responding to this new information.

*Procedural grounds*

13. The appellant submits that the Council acted unreasonably as they failed to provide an appeal statement having indicated within their appeal questionnaire that they would do so. The Council does not have a duty to provide a Statement of Case. Other than failure to update the parties on the status of the DPD, dealt with above under Issue 11, the lack of a Council Statement of Case may have delayed the appellant's submission of their final comments, but it is unclear how this resulted in additional expense. The Officer Report set out the reasons for refusal and policy background upon which this decision was made. This provided the background against which the appellant presented their case,

[3] South Lakeland Local Plan. Development Management Policies. Publication Document. November 2017. Adopted 28 March 2019.

which is what they proceeded to do. On balance the application for costs on procedural grounds is therefore refused.

14. It is also contended that the Council acted unreasonably during the application process. The PPG[4], at paragraph 033 makes it clear that costs cannot be claimed for the period during which the application was being determined.

**Conclusion**

15. I consider the Council evaluated the application and considered the merits of the scheme and therefore the appeal could not have been avoided. The Council had reasonable concerns about the impact of the proposal and justified its decision. During this process the Council exercised its planning judgement which, although it may not concur with a decision made subsequently at appeal, is not unreasonable. However, I have found that the Council did behave unreasonably by submitting late evidence with regard to their updated position in relation to the status of their DPD. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated only with respect to this one issue. Accordingly, a partial award of costs is justified.

16. 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 South Lakeland District Council shall pay to Mr Liam Dixon, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the applicant's response to the updated position of the DPD; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The applicant is now invited to submit to South Lakeland District 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.

*E Symmons*

INSPECTOR

[4] Planning Policy Guidance – Use of Conditions. Published 6 March 2019. Last updated 23 July 2019.