



Costs Decision

Site visit made on 4 February 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Costs application in relation to

Appeal A: APP/W3710/X/19/3221543;

Appeal B: APP/W3710/W/19/3237196; and

Appeal C: APP/W3710/W/19/3237197

Woodlands Farm, Ansley Road, Robinsons End, Nuneaton CV10 8LR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Jelly for a full award of costs against Nuneaton & Bedworth Borough Council.
 - Appeal A was against the refusal of a certificate of lawful use or development for the use of an agricultural barn and apron for storage purposes (use class B8).
 - Appeal B was against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the continued use of barn for parking 2 HGVs without complying with conditions 1 and 3 attached to planning permission Ref: 012403, dated 21 May 2018.
 - Appeal C: was against a failure to give notice within the prescribed period of a decision on an application for planning permission for the change of use from former agricultural building (sui generis use) to storage (class B8).
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The application for costs is for a full award and is made on substantive grounds.
4. In relation to Appeal A the appellant states that the Council conceded that there had been a change of use from agriculture to storage and they produced no counter evidence to the affidavits provided with the application. The Council also unilaterally changed the description of development to include the word 'commercial'.
5. In relation to Appeal A, I have concluded that while there has been a material change of use of the appeal building from an agricultural use to a non-agricultural use, it had not been demonstrated in a precise and unambiguous way that it is unrelated to other uses on the site within the appellant's

ownership. In particular, the appeal building and apron is more likely than not to be part of a wider planning unit. As such, the Council's refusal to grant a certificate of lawful use or development in respect of the use was well founded. I therefore find that the Council were not unreasonable in the refusal of the appeal application.

6. In relation to Appeal B the applicant states the Environmental Health Team (EHT) objections were received on the last day for determining the application, the findings of the noise assessment were not agreed and that residual concerns were capable of being dealt with by conditions. He notes that the application was before the Council for 8 months. The applicant also states that the Council had no intention of determining applications beyond their statutory period unless an extension of time has been agreed. The Council state that they forwarded the EHT objections to enable these objections to be overcome. Subsequently a noise report was submitted by the applicant and phased extensions of time were agreed. The EHT maintained its objections, although the Council anticipated that a solution could be found between the parties. However, the agent submitted an appeal against non-determination prior to a solution being found.
7. While I appreciate the applicant's concerns over delays in the progress of the application, it appears on the evidence before me that the Council sought to try to resolve issues, albeit there were delays. At the appeal there remained concerns over the effect of noise and disturbance on the living conditions of local residential occupiers. Although I have put different weight on the evidence submitted in relation to the issue of the effect of the development on the living conditions of nearby residents, this is a matter of judgement, and the stance of the Council was not unreasonable just that they put different weight on different matters than I did. In relation to Appeal B I consider the Council did not act unreasonably.
8. In relation to Appeal C the applicant states that the application was before the Council for 4½ months. The applicant sought to address the Highway Authority (HA) objection by prompt response including indicating conditions could be imposed. The HA did not respond further and the Council withheld permission for no good reason. Subsequent objective analysis by the appellant of highway safety impacts demonstrated, in his view, that the HA objections were unfounded. The EHT failed to provide a response on the noise report submitted with the application. The Council indicated that it had no intention of determining the application beyond the statutory period, unless an extension of time had been agreed.
9. The Council state it forwarded the HA objection on 7 June 2019 to the agent who responded requesting the application was not determined to give the applicant time to resolve the issue. Direct discussion with the HA took place and an extension of time was agreed. The application was held in abeyance to await the HA response as an alternative to refusing the application on highway safety grounds. The HA did not respond until 7 October 2019 due to workload issues. This was after the applicant had submitted an appeal on the application against non-determination. The Council state that it sought to overcome highway safety issues rather than considering refusing the application.
10. In relation to the delay in reaching a decision the Council sought to engage and resolve issues. However, there appears to have been significant delays by both

the HA and EHT in responding to consultations promptly. This is stated to be due to workloads/resourcing issues. This was not the fault of the applicant who sought to engage with the Council when issues were raised with him.

However, the Council maintained objections to both Appeals B and C. I am satisfied that there were issues that had not been resolved at the time the appeals were submitted for both Appeals A and B. While I have disagreed with the Council on both the effect on living conditions in Appeal B and the highway safety issue in Appeal C, these issues were matters of judgement, and while I gave different weight to the issues than the Council, that does not make the objections to the appeals unreasonable. In the light of this I consider the Council did not act unreasonably in relation to Appeals B and C.

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

Hilda Higenbottam

Inspector