



Costs Decisions

Site visit made on 3 July 2020

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Costs application A in relation to Appeal Ref: APP/A0665/W/19/3242755 Horns Farm, Chester Road, Dunham on the Hill, Chester WA6 0JF

- 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 P Ogilvie for a full award of costs against Cheshire West & Chester Council.
 - The appeal was against the refusal of planning permission for a material change of use of buildings and land from use for car repairs and servicing to a mixed use of car repairs and servicing and car wash including valeting of cars and commercial vehicles including hard standing and structures (Partially in retrospect).
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Costs application B in relation to Appeal Ref: APP/A0665/W/19/3242763 Horns Farm, Chester Road, Dunham on the Hill, Chester WA6 0JF

- 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 P Ogilvie for a full award of costs against Cheshire West & Chester Council.
 - The appeal was against the refusal of planning permission for a material change of use of land from agricultural to amenity land associated with Horns Farm (In retrospect).
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Decisions

Application A

1. Application A for an award of costs is refused.

Application B

2. Application B for an award of costs is refused.

Reasons

3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby, caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.
4. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a lack of co-operation with other parties, taking into account that one of the aims of the costs regime is to discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

Unreasonable behaviour can also include substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations, and vague and generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The application for costs in both Application A and Application B broadly relates to each of those matters listed as examples.

5. In terms of co-operation between parties, the PPG indicates that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. Based upon the evidence before me, the planning applications subject to Application A and Application B were both submitted to the Council on 28 November 2018 following pre-application correspondence between a Council officer and the applicant on 15 October 2018 and 24 October 2018. The applicant indicates that the target dates for determination of the planning applications were given as 25 January 2019, but that no correspondence was received from the Council until feedback from officers provided on 11 April 2019, then from 23 April 2019 until the decisions for each application were made on 12 November 2019. The applicant's evidence suggests that no extension of time was requested by the Council or given by the applicant in relation to either application.
6. I sympathise with the dissatisfaction and frustration of the applicant with the failure of the Council to determine the planning applications subject of Application A and Application B within the respective eight-week determination periods, and in the further period of time up to 12 November 2019. The delay in determining the applications had inhibited the prospect of the applications and appeals being determined within a year as set out in the Government's 'planning' guarantee in the PPG, notwithstanding the unavoidable delays in determining the appeals due to restrictions associated with the outbreak of COVID-19. It has been drawn to my attention that the applicant has requested the return of the planning fees under Regulation 9A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. However, such matters fall outside of my jurisdiction, and the costs applications are necessarily considered in terms of any unnecessary or wasted expense in the appeal process.
7. The Council provided a response to Application B which accepts delays in determining the application and offers an explanation in terms of temporary resourcing issues within the planning service. As part of the Council response it is suggested that in such circumstances, applicants and agents are informed in writing that there is a delay. However, there is no evidence before me that such correspondence was sent to or received by the applicant in relation to Application B (or Application A to which the same circumstances reasonably applied). In fact, there is no evidence before me of any Council correspondence from submission of the planning applications on 28 November 2018 until 11 April 2019. The final Council correspondence in the evidence was on 23 April 2019, with the decisions subsequently occurring on 12 November 2019. Whilst there is a suggestion of telephone conversations having taken place during these periods, there is no substantiated evidence that the Council provided a proper explanation for the delays in determining the planning applications or requested that the applicant agree to an extension of time. I, therefore, find the Council approach to constitute unreasonable behaviour in relation to both Application A and Application B when having regard to the PPG.

8. Notwithstanding my finding of the Council's unreasonable behaviour during the planning application process as part of Application A and Application B, an award of costs is dependent upon a clear demonstration that the applicant incurred unnecessary or wasted expense in the appeal process as a result. I, therefore, consider each of the applications individually in the sections below.

Application A

9. The Council's decision notice relating to the proposal subject of Application A includes two reasons for refusal reflecting two main issues of dispute - whether the proposal is inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework), including the effect on openness and the purposes of including land within it; and the effect on the character and appearance of the area. In those respects, the reasons for refusal set out in the decision notice are specific in terms of the harm identified by the Council and the associated conflict with policies of the Cheshire West and Chester Council Local Plan Part One Strategic Policies (LP Part One), adopted January 2015, and the Framework.
10. It will be seen from my appeal decision that I concluded that the proposed development subject of Application A is harmful for the identified reasons and conflict with policies of the LP Part One and the Framework, and that other material considerations did not outweigh the harm. It follows that the Council's evidence substantiated the reasons for refusal relating to the main issues I identified and therefore, did not unnecessarily prevent or delay development.
11. It is clear from the evidence that the Council's concerns relate to disputed matters where the parties have different views on the proposal relative to policy compliance and interpretation. Therefore, I cannot reasonably find that an appeal could have been avoided if the Council had engaged further with the applicant prior to making its decision, or that their concerns would have been capable of being overcome via amendments to the proposal. In such circumstances where the applicant decided to pursue the appeal to its end, with the Council's arguments prevailing relative to each reason for refusal, the costs of an appeal cannot be considered an unnecessary or wasted expense.
12. Having regard to the above, I consider that whilst unreasonable behaviour of the Council has been demonstrated it did not result in unnecessary or wasted expense in the appeal process for the applicant as described in the PPG in respect of Application A.

Application B

13. The Council's decision notice relating to the proposal subject of Application B includes two reasons for refusal which reflect two main issues of dispute - whether the proposal is inappropriate development in the Green Belt for the purposes of the development plan and the Framework, including the effect on openness and the purposes of including land within it; and the effect on the character and appearance of the area. The reasons for refusal set out in the decision notice are specific in terms of the harm identified by the Council and the conflict with policies of the LP Part One and the Framework.
14. The applicant has suggested that the Council failed to understand the basis upon which the proposal subject to Application B had been applied for. However, it is clear from the officer report that the application was determined

in terms of the change of use and associated operational development applied for, despite some reservations over the possibility of an alternative use having taken place.

15. It will be seen from my appeal decision that I found that the proposal is harmful for reasons and conflict with policies of the LP Part One and the Framework, insofar as relevant to the main issues and that the other material considerations did not outweigh the harm. It follows that the Council's evidence substantiated the reasons for refusal relating to the main issues I identified and therefore, did not unnecessarily prevent or delay development.
16. It is clear from the evidence before me that the Council's concerns relate to matters in dispute where the parties have different views on the proposal relative to policy compliance and interpretation. Therefore, I cannot reasonably find that an appeal could have been avoided if the Council had engaged further with the applicant prior to making its decision, or that their concerns could have been overcome via amendments to the proposal. In such circumstances where the applicant decided to pursue the appeal to its end, with the Council's arguments prevailing relative to each reason for refusal, the costs of an appeal cannot be considered an unnecessary or wasted expense.
17. The applicant has referred to separate costs accrued as a result of delays to the determination of the application subject of the appeal and the effect on the costs of future projects dependent on the establishment of the lawful use of the site. However, there is no substantive evidence with respect to future projects and in any case, given the outcome of the appeal I cannot find any unnecessary or wasted expense in the appeal process as a result.
18. Having regard to the above, I consider that whilst unreasonable behaviour of the Council has been demonstrated it did not result in unnecessary or wasted expense in the appeal process for the applicant as described in the PPG in respect of Application B.

Other Matters

19. The Council had issued a separate enforcement notice relating to the proposal subject of Application A, which together with a related appeal was subsequently withdrawn. However, that situation and the associated costs application as made by the applicant (also now withdrawn), fall outside of my jurisdiction and have no influence on my conclusions.

Conclusions

20. In terms of Application A made by the applicant against the Council, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for the award of costs is, therefore, refused.
21. In terms of Application B made by the applicant against the Council, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for the award of costs is, therefore, refused.

Gareth Wildgoose

INSPECTOR