
Costs Decisions

Site visit made on 22 September 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2020

Application A: Costs application in relation to Appeal Ref:

APP/L3245/W/20/3253658

Cruckmeole Farm, B4386 Junction Cruckton to A488 Cruckmeole, Cruckton, Shrewsbury, Shropshire SY5 8JN

- 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 Shropshire Council for a full award of costs against Mr Sandells, K J Sandells.
 - The appeal was against the refusal of planning permission for the erection of a free range egg production unit including silos and all associated works.
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Application B: Costs application in relation to Appeal Ref:

APP/L3245/W/20/3253658

Cruckmeole Farm, B4386 Junction Cruckton to A488 Cruckmeole, Cruckton, Shrewsbury, Shropshire SY5 8JN

- 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 Sandells, K J Sandells for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for the erection of a free range egg production unit including silos and all associated works.
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Decision

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

Application A

3. The applicant's (the Council) costs claim is based on substantive grounds that an appellant is at risk of an award of costs being made against them under the PPG if the appeal or ground of appeal had no reasonable prospect of succeeding.
4. The claim principally relates to whether or not adequate information was submitted by the appellant in order for the applicant to complete its

requirements under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The appellant considers that if information was lacking, the applicant should have requested it. In addition, the appellant does not accept that the additional information was necessary in order to allow the applicant to carry out its duties under the Habitats Regulations.

5. The appellant is entitled to take a different stance from the applicant so long as a satisfactory case can be made for a contrary view. This is such an instance, in particular as the appellant provided an Ammonia Report with the application and then, subsequently, an Ammonia Mitigation Scheme. Whilst I disagree with the appellant's view, it is not a position without merit due to the information in relation to ammonia that was submitted.
6. The applicant has further pointed to guidance in the PPG that states that the aim of the cost regime, in part, is to discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.
7. Again, this depends on the view taken with regard to the adequacy of the information submitted, a point which I have already addressed above. The appeal itself concerns a revised application and there was clearly dialogue between both main parties during its consideration, as is demonstrated by the various emails that I have been referred to.
8. The applicant has also referred to a lack of information pertaining to the ecological effects on an adjacent watercourse, odour and noise. The appellant has, though, put forward an evidenced case on these planning considerations with regard to the various supporting reports and the clarifications that have been provided. None of these matters amount to unreasonable behaviour.
9. The applicant has also stated that the claim is made on procedural grounds. However, none of the related types of behaviour under the PPG that may give rise to such an award against an appellant has been demonstrated, as well as on substantive grounds.

Application B

10. The applicant's (the appellant) claim is based on the grounds that with regards to costs guidance, the Council could have been expected to take a positive approach to the application; to request information that it considered to be lacking and provide a reasonable opportunity for it to be provided; and, to consider said information so that a proper judgement about the impact of the development could be made.
11. The Council's approach to determining the application was based on information it considered was lacking in respect of the requirements of the Habitats Regulations. With the strong level of protection afforded to sites designated under these regulations and the related associated precautionary approach, it is not unreasonable for the Council not to take a positive stance in these circumstances.
12. With regard to requesting further information and providing a reasonable opportunity for it to be provided, the application was refused a short period of time after the Council's Ecologist's response. However, the applicant does not agree that such information is required and so even if the opportunity had been afforded to provide it, it is not evident how this would have changed the

Council's decision and, therefore, avoided an appeal. As a consequence, the Council's actions also are not unreasonable in these respects.

13. The applicant is also of the view that the Council should have considered whether any perceived adverse impacts or concerns could have being dealt with by way of conditions or an agreement under Section 106 of the Town and Country Planning Act 1990 (S106 agreement). Mitigation can, though, only be considered after it has been established whether there would be likely significant effects under the Habitats Regulations. As the Council did not consider it had sufficient information to make such a judgement over the level of effects, it was not in a position to consider the use of conditions or a S106 agreement to address perceived adverse effects. Accordingly, its position was also not unreasonable, in this regard.

Conclusion

14. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to Application A or Application B. An award of costs is not, therefore, justified in relation to either application.

Darren Hendley

INSPECTOR