



Costs Decision

Site visit made on 18 August 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2020

Costs application in relation to Appeal Ref: APP/N1920/W/20/3252826 Fold Farm, Galley Lane, Barnet, Hertfordshire EN5 4RA

- 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 G Lewis for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission which was originally described as 'change of use of an agricultural building to B1 (Light Industrial) and B8 (Storage and Distribution) use'.
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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 appeal process.
3. The applicant claims that it was unreasonable for the Council to set out that it would have refused planning permission for reasons related to the proposal as originally described, when it had agreed to the proposal being amended during the application process. The applicant also claims that the Council acted unreasonably as it did not consider the planning application in a timely manner or provide a consultation response from the Highway Authority until after the appeal had been made.
4. The PPG sets out that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined. It also states that the local planning authority may be at risk of an award of costs, if the Inspector concludes there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. The PPG also indicates that a local planning authority is at risk of an award of costs if they only supply relevant information at appeal when it was previously requested, but not provided, at application stage, and introduce fresh and substantial evidence at a late stage.

6. As set out in my appeal decision, evidence has been provided which shows there was agreement between the parties to amend the proposal so the building would only be used for light industrial purposes (within Class B1(c) as defined by the UCO¹) and not storage and distribution purposes (within Class B8 as defined by the UCO). The Council has not disputed this nor put forward any reasons for reverting to the proposal as originally described for the purpose of providing its stance for the appeal. In the absence of justification indicating otherwise, I consider that the Council should have based its stance on the amended proposal, as agreed. The Council has acted unreasonably in not doing so.
7. The Council has stated that the original proposal would have been refused because it would result in increased activities and operations at Fold Farm, which would have a harmful impact on the Green Belt. I am satisfied the Council's stance in respect of this matter applies to the Class B1(c) use as well as the Class B8 use. Furthermore, its views are reasonable in the context of the protection afforded to the Green Belt by the development plan and the National Planning Policy Framework (the Framework). Thus, the applicant would have been required to contest the Council's views in respect of this matter even if the Council had based its stance on the amended proposal.
8. The Council has also stated that it would have refused the proposal as originally described due to concerns relating to its effect on highway safety and the efficient operation of the highway network, particularly in respect of the suitability of the access arrangement and vehicle movements. These concerns stem from comments made by the Highway Authority regarding the original proposal and relate only to the Class B8 use. The Council has thus not put forward substantive reasons indicating that the amended proposal is unacceptable in respect of highway matters. Accordingly, the applicant would have not had to comment on highway matters at appeal if the Council had based its stance on the amended proposal.
9. I therefore find that the applicant has incurred unnecessary and wasted expense in having to put forward a case which demonstrates that the proposal was amended and contest the Council's view in respect of highway matters. However, the applicant has not incurred unnecessary or wasted expense in having to contest the Council's stance regarding the Green Belt.
10. I am satisfied that the Council did not make a decision within the relevant time limit as a consequence of the amendment to the proposal and as, on review, it found the proposal would only be acceptable if very special circumstances existed as per paragraph 143 of the Framework. The Council's view in respect of the Green Belt is reasonable and thus it was appropriate to give the applicant an opportunity to demonstrate that very special circumstances existed. While the evidence appears to show that the Council may not have always responded to correspondence from the applicant in a timely manner, I consider that it acted reasonably during the application process despite a decision not being made.

¹ The Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), as it was on 31 August 2020, as required by Regulation 4 of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

11. In addition, the applicant was able to comment on the Highway Authority's response and no unnecessary or wasted expense was incurred in this respect as the Highway Authority raised no objection for the applicant to dispute.

Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.
13. A partial award of costs is justified, to cover the expense incurred by the applicant in having to put forward a case which demonstrates that the proposal had been amended and contests the Council's stance for the purposes of the appeal in respect of the effect of the proposal on highway safety and the efficient operation of the highway network, including the suitability of the access arrangement and vehicle movements.

Costs Order

14. 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 Hertsmere Borough Council shall pay to Mr G Lewis, the costs of the appeal proceedings described in the heading of this decision are limited to those costs incurred by the applicant in having to put forward a case which demonstrates that the proposal had been amended and contests the Council's stance for the purposes of appeal in respect of the effect of the proposal on highway safety and the efficient operation of the highway network, including the suitability of the access and vehicle movements; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Hertsmere Borough 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.

Mark Philpott

INSPECTOR