



Costs Decision

Site visit made on 14 October 2020

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2021

Costs application in relation to Appeal Ref: APP/J0405/W/20/3250275 Barn at Oakwood Farm, Rowden Lane, Mentmore, LU7 0QD

- 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 D. Harris-Smith for a full award of costs against Aylesbury Vale District Council (which subsequently merged with other local authorities on 1 April 2020 to become Buckinghamshire Council).
 - The appeal was against the refusal of prior approval of proposed change of use of agricultural building to a dwellinghouse (Use Class C3) and associated operational development.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where:
 - a party has behaved unreasonably; and
 - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on substantive and procedural grounds in that it alleges the Council acted unreasonably in; - (1) not following the professional advice of its Environmental Health Officer, refusing prior approval on a ground which could be dealt with by way of a condition, and failing to substantiate its reason for refusal; (2) not determining cases in a similar manner; (3) its handling of the application; and (4) refusing development which is permissible.
5. The PPG states that where a local planning authority has exercised their duty to determine planning applications in a reasonable manner, it should not be liable for an award of costs.

Not following the professional advice of its Environmental Health Officer, refusing prior approval on a ground which could be dealt with by way of a condition and failing to substantiate its reason for refusal

6. I recognise that the reason for refusal in the second prior approval application¹ (which was the subject of the accompanying appeal) is identical to that in the first prior approval application². However, I do not find this in itself to be particularly surprising given that the Council did not consider the resubmission to have adequately addressed the matters upon which it refused the first.
7. Set against this context, it is important to note that the Council is not obliged to follow the advice of its Environmental Health Officer (EHO), on the provision that there are sound and justifiable reasons for not doing so. In this instance, the EHO's comments in terms of noise were based on the agricultural operation within the adjacent poultry buildings and not that emanating from HGVs attending the site. Although it will be seen from the appeal decision that I am satisfied that the living conditions of future occupants would not be harmed by the latter, I do not consider it unreasonable of the Council to have refused the scheme on this basis given the close proximity of the proposed dwelling to the access road.
8. The Council adopted a different position from its EHO on insects and odour because it took the view that a management plan condition would not be enforceable; - a position which I agree with. Furthermore, the Council is not obliged, as asserted by the appellant, to impose a condition simply because its EHO considered it appropriate to do so; - such matters relating to whether planning conditions meet the relevant tests properly falls to the local planning authority to deal with as this relates to professional planning judgement. I do not therefore agree with the appellant that the Council ignored the EHO's change in position between the first and second application.
9. It will be seen from the appeal that I agree with the appellant that the matter of odour and insects would be satisfactorily dealt with under other regulations, codes and standards and that a management plan condition was not therefore necessary. However, I am not of the view that this point was made sufficiently clear in the statement submitted with the application or accompanying odour and insect management plan, whereas the subsequent appeal statement dealt with this matter much more thoroughly. As a consequence, I am satisfied that it may not have been fully clear to the Council that the other regulations, codes and standards would have addressed all of its land-use planning concerns.
10. The appellant states that the Council incorrectly rejected their proposal to address its concerns via the imposition of an agricultural occupancy condition. However, the imposition of an agricultural occupancy condition will not in all cases mitigate poor quality living conditions and hence I do not consider it unreasonable of the Council to have rejected this approach given its position on the matter.
11. I recognise that the Inspector in the Piggeries appeal³ referred to by the appellant considered an agricultural occupancy condition to be acceptable, but there is insufficient evidence before me to conclude that the circumstances and

¹ Council Ref: 20/00325/COUAR

² Council Ref: 19/04070/COUAR

³ PINS Ref: APP/N2739/W/15/3003584.

subsequent impacts of both developments are identical. In any event, consideration of whether this approach is capable of mitigating harm is ultimately a matter of fine judgement based on a fact and degree assessment of the particular circumstances and evidence of the case.

12. In light of the above, I do not consider it unreasonable of the Council to have refused the scheme on this basis and am satisfied that this was adequately substantiated.

The Council not determining cases in a similar manner

13. My attention has been drawn by the appellant to 2 planning application decisions⁴ which they feel were determined differently to the appeal scheme. However, the Long Crendon development was not comparable in terms of the scale of the adjacent farm building and it is unclear from the evidence whether the overall agricultural operation was of a similar scale. There is also no evidence before me showing the relationship between the proposed dwellings and neighbouring agricultural buildings for the Thornborough decision, or information relating to the scale and nature of the agricultural operation. Accordingly, I cannot be certain that the circumstances are directly comparable to those in this appeal and there is as a consequence insufficient evidence for me to conclude that the Council did not determine these cases in a similar manner. However, if the circumstances differed between the sites in terms of proximity and scale of the adjacent farming operation, I do not consider it unreasonable of the Council to have formulated a different conclusion.

The Council's handling of the application

14. I recognise that the email correspondence from the Council may have given conflicting views relating to the comments of the EHO during the application, but I do not consider the Council's justification for its final decision to be unreasonable. Set against this context, it is important to note that there is no statutory requirement for the local planning authority to engage with applicants on such matters during the course of an application; - the Council's legal duty is simply to determine the application.
15. In the event that an applicant wishes to engage the Council in discussions about a proposal, the opportunity exists for them to do so by front-loading the matter via a pre-application enquiry. This is reinforced by the PPG which states that pre-application engagement by prospective applicants enables, amongst other things, discussions about the possible mitigation of the impact of a proposed development, including any planning conditions⁵.
16. In light of the above, whilst I recognise that the Council's correspondence may have been frustrating for the appellant, it appears to me that this situation arose because Council officers were trying to be helpful in responding to the appellant's queries, despite their consideration of the scheme still evolving and being subject to change. Set against this context, it is not uncommon for a planning officer to change their position during the course of an application, particularly where there are many different factors and conflicting views to consider, some of which necessitate internal discussions with more senior colleagues before a final recommendation is made.

⁴ Council Ref 19/01993/COUAR at Long Crendon and 19/03523/COUAR at Thornborough.

⁵ Paragraph: 001 Reference ID: 20-001-20190315, Revision date: 15 03 2019

Refusing development which is permissible

17. Although it will be seen that I agree with the appellant that prior approval should be granted, for the reasons referred to above I do not agree that the Council prevented or delayed development that clearly [my emphasis] should be permitted, having regard to the representations made and national policy in the Framework. The matter was in my view much more finely balanced than the appellant considers to be the case.

Conclusion

18. In view of the above, I conclude that the application for costs on procedural and substantive grounds fails. Given my conclusions on the allegation of unreasonable behaviour, the matter of unnecessary or wasted expense does not need to be considered.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Robert Fallon

INSPECTOR