
Costs Decision

Site visit made on 15 December 2020

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Costs application in relation to Appeal Ref: APP/Y2620/W/20/3257669 Glebe Farm, Marsh Road, Potter Heigham, Norfolk NR29 5LN

- 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 Robert Hall for a full award of costs against North Norfolk District Council.
 - The appeal was against the refusal of planning permission for conversion of 2 no. agricultural buildings into 4 no. dwellings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Advice over the award of planning appeal costs is set out in the Government's Planning Practice Guidance. It states the established premise that parties to an appeal normally meet their own costs. However, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal. In this application the case is made that the Council had acted unreasonably in both contexts.
4. On the basis of the appeal decision, I do not find the Council acted unreasonably in respect of the substance of its refusal reason with regard to the conflict with development plan policy over housing in the countryside, where the agricultural buildings did not merit providing for this by means of conversion and where such a scheme would have caused harm in respect of the character and appearance of the area. Although arriving at a different reason to my own, the Council was, I believe, acting reasonably over refusing new housing in a high flood risk location, in line with national policy.
5. It would appear that some earlier dialogue with the applicant might have clarified the issue of providing an adequate ecological assessment, and there appears little substance to the actual conversions directly leading to any biodiversity harm. However, this reason for refusal also relates to indirect effects on the nearby European Natura 2000 sites, whereby the payment of a tariff towards monitoring and mitigation would have been required. If required, then this seems to conflict with the Council screening out of any likely significant effect in combination with other housing growth, as this would then

not have required the contribution towards mitigation and any need for a Habitats Regulations assessment. The Council appears to me to have not fully substantiated this reason for refusal as far as can be gleaned from the evidence. Procedurally, some earlier dialogue with the applicant could have provided clarity over these requirements, potentially avoiding this third reason for refusal.

6. Similarly, with regard to any liability for affordable housing, the aggregation of further potential residential conversions on this site, based on a Court ruling¹ made over an authority's development plan policies elsewhere, seems to have led to an inadequately substantiated reason for refusal. The applicant had been amenable to some further discussion over providing for affordable housing based on the Council's own policies. Instead of this, the refusal of planning permission was issued with a substantively unreasonable reason relating to insufficient information submitted.
7. Procedurally, there would appear to be some basis for finding a lack of cooperation by the Council in not engaging adequately over affordable housing requirements and not providing information requested at the application stage
8. Overall, on the basis of the costs application and the Council's rebuttal, I consider there to be grounds for a partial award of appeal costs relating to the expense incurred by the applicant in contesting reasons three and five of the Council's decision.

Costs Order

9. 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 North Norfolk District Council shall pay to Mr Robert Hall, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting reasons three and five of the Council's decision of 27 May 2020, referenced PF/19/2204; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to North Norfolk District 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.

Jonathan Price

Inspector

¹ New Dawn Homes Limited v Secretary of State for Communities and Local Government & Tewksbury Borough Council [2016] EWHC 3314 (Admin)