



Costs Decision

Site visit made on 25 November 2020

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Costs application in relation to Appeal Ref: APP/C3620/W/20/3244756 Lodge Farm, Lodge Lane, Holmwood, Dorking, Surrey RH5 4NY

- 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 Ford Farms for a full award of costs against Mole Valley District 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 for the change of use of land from agriculture to a contractor's yard with ancillary cabins, containers, parking and boundary treatment (Use Class B8).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary expense in the appeal process. The applicant claims the Council acted unreasonably in processing a duplicate application by not allowing it to be called into Committee determination. This does not relate directly to the appeal process and concerns the duplicate and not the appeal submission.
3. The case for costs mainly relates to the fact that the Council failed to confirm a reason for refusal in writing. The Council acknowledges this but argues that the case officer's report contained analysis of the proposal, and that a specific reason was included on the duplicate application. However, the decision on the duplicate application post-dated the submission of the appeal. When submitting the appeal, there would have been uncertainty on the range and extent of concerns in the Council's report, and which would warrant inclusion in a refusal reason or reasons. The applicant's appeal statement was obligated to address matters such as the impact of the use on the surrounding area and access and traffic generation, issues of concern to some parties, but which did not ultimately feature as issues in the Council's case for resisting the proposal.
4. The applicant's claim is also on the grounds of "*preventing or delaying development which should clearly be permitted*". It will be evident from my dismissal of the main appeal that I have attached significant weight to the benefit of farm diversification in recognition of the applicant's circumstances, but that this is not outweighed by Green Belt considerations.

5. The case for costs is also based upon “*refusing to enter into pre-application discussions*” or dialogue whereby the issues to be considered could be narrowed. The applicant claims that the Council are currently refusing to provide pre-application advice on all matters, that pre-application advice could have considered the need for diversification and other potential locations on the farm, including existing buildings, and that an alternative favourable application could have been submitted. This is a matter of conjecture and I am sceptical that the Council’s concerns relating to the principle of this development in the Green Belt could necessarily have been satisfactorily addressed through a pre-application process. Moreover, there is evidence of some dialogue at the application stage over matters arising such as the content of the Agricultural Appraisal.

Conclusion

6. My findings are that the Council behaved unreasonably in not issuing a clear reason for refusing the appeal proposal. PPG states an award of costs may be made against a Council in relation to “*failure to produce evidence to substantiate each reason for refusal on appeal*”. The absence of a refusal reason created uncertainty for the applicant and unnecessary expense in the appeal process in preparation of a longer appeal statement on a greater range of issues than would have been necessary had the refusal reason been known. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in relation issues other than Green Belt, is justified.

Costs Order

7. 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 Mole Valley District Council shall pay to Ford Farms, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the appeal in relation to the impact of the use on the surrounding area and access and traffic generation, issues other than Green Belt, in the appeal statement. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the 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.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR