
Costs Decision

Site visit made on 08 December 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2021

Costs application in relation to Appeal Ref: APP/R3705/W/20/3260060 Poultry Farm, Green End Road, Green End, Fillongley CV7 8PH

- 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 J Potter for a full award of costs against North Warwickshire Borough Council.
 - The appeal was against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the National 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. Unreasonable behaviour may be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant considers that the Council behaved unreasonably in refusing to grant approval for the proposal and that it failed to produce evidence to support its reason for refusal. The appellant considers such behaviours led to an unnecessary appeal and therefore unnecessary and wasted expense in the appeal process.
4. In summary, the applicant considers that the Council should not have refused the application because a) the Highway Report submitted with the application concluded that the proposal would meet the requirements of paragraph 108 of the National Planning Policy Framework (the Framework) and that there would be no reasonable grounds to refuse the application on the basis of paragraph 109 of the Framework; and b) the Highway Authority did not object to the proposal. Additionally, the Council's Refuse Team did not object and the Council acknowledged that there would be a betterment in terms of vehicle types accessing the site. The appellant also suggests that the Council based its refusal on the opinions of residents and that, as there would not be a severe impact on the highway network, the Council appeared to have a preference for an alternative access, ie the access approved as part of a previous approval Ref PAP/2020/0175. The appellant considers such factors do not represent a reason for refusal.

5. For clarification, the Council's reason for refusing to grant approval for the proposal is that *"the proposal fails in respect of the criteria of paragraphs Q.2 (1) (a) and (e) of Part 3, of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015, as amended, because the development is undesirable due to the risk of danger to pedestrians and cyclists."* The Council had regard to paragraphs 108 and 109 of the Framework in reaching its conclusion, but the reason for refusal relates to the proposal not satisfying certain aspects required by the Town & Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
6. Paragraphs Q.2 (1) (a) and (e) of Part 3, of Schedule 2 of the GPDO require the Council to consider the transport and highways impacts of the development and whether the location of the building makes it otherwise impractical or undesirable to change its use to a dwellinghouse.
7. The Council is the decision-taker and is therefore correct in pointing out that the Highway Authority's position is not one of direction; rather, comments received from consultees are for the Council to take into consideration. The Council acknowledges that it gave greater weight to the representations received from residents, the reason being that the opinions of residents were based on their direct day-to-day experience of road use in the area.
8. I note that the weighting the Council attaches to any consultee comments, submitted reports and/or representations received in respect of an application is a matter for its judgement. Regardless of the opinions expressed by the appellants Highway Engineer or the Highway Authority Officers, the Council is entitled to reach its own judgement on the matters at hand. In addition, the Council's opinion on the highway safety matters that led to the reason for refusal is one that it appears to have consistently expressed in relation to applications on the site, noting that 2 previous applications included highways issues in the reasons for refusal. I believe the Council was clear, as evidenced in the Council Officer's report and the reason for refusal on the decision notice, about why it considered the proposal to pose a threat to highway safety.
9. Bearing in mind all the matters discussed above, and notwithstanding the decision I reached on the merits of the appeal, I conclude that the Council was entitled to reach a different conclusion to those of the appellant's Highway Engineer and the Highway Authority's Officer and to attach the weighting it attached to representations received from residents. I consider the Council gave clear reasons for why it considered the proposal did not meet all the requirements of the GPDO, and it was also entitled to refuse the application for the reason given on the decision notice.
10. I therefore consider that it has not been demonstrated that the Council behaved unreasonably in respect of procedural or substantive matters associated with the determination of application Ref PAP/2020/0290. Consequently, there has not been any unreasonable behaviour which caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

J Williamson

INSPECTOR