



Costs Decision

Site visit made on 9 December 2020

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2021

Costs application in relation to Appeal Ref: APP/Y3615/W/20/3257323 Valentines Farm, Rose Lane, Ripley, Woking GU23 6NE

- 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 Guildford Borough Council for a partial award of costs against Mr Alexander Stewart Clark.
 - The appeal was against the refusal of planning permission for enclosure of Barn B and change of use of the whole barn building (comprising Barn A and Barn B) from light industrial use (B1(c)) to a mix of general industrial (B2) and storage and distribution (B8) uses, the sub-division of the barns into 8 No. separate units (4No. units in Barn A and 4No. units in Barn B) and the installation of 2No. extractor fan chimneys on the south-west facing roof of Barn A.
-

Decision

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

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.
3. The Council's case for a partial award of costs relates to 3 of the 4 reasons for the refusal of the appeal application. In respect to the first reason on the Green Belt it is claimed that as the enclosure of the barn has twice been refused and dismissed on appeal that to appeal the refusal is unreasonable behaviour resulting in unnecessary expense. PPG states as an example of behaviour which could give rise to a substantive award of costs is "*the appeal follows a recent appeal decision in respect of the same, or very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector has decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period*". The cost claim also refers to the non-submission of additional information during the appeal process to address concerns raised in refusal reasons (3) and (4).
4. There have been material changes in circumstances since the previous appeal decisions in 2008 and 2013. Those appeals related to a totally open sided barn in a countryside setting whereas the current appeal is just for enclosing Barn B as the Council had in the meantime granted consent for enclosing the larger Barn A. The lawful use of the building has changed from agriculture to light industrial and the site's setting reflects this. Relevant planning policies have also been updated, although an earlier version of the National Planning Policy Framework was in place at the time of the 2013 appeal.

5. The applicant has referred to two other changes. The need for employment space in the Borough is claimed to be a material change; but economic growth was also raised as a point in favour of the proposal in the 2013 appeal decision. Secondly, the ability to lawfully stack light industrial produce as a form of enclosure is also raised as a change; but it would have been possible to lawfully stack agricultural produce in the barn in a similar way prior to the change of use.
6. Nonetheless, there are material changes in circumstances since the previous appeal decisions. As such, I do not consider contesting the Green Belt refusal reason to amount to unreasonable behaviour. The retrospective nature of the proposal is unfortunate, but this of itself does not mean that the proposal is unreasonable.
7. The applicant included a Technical Note with data of traffic flows from users of the units at that time for the planning application stage. Whilst the Council may have preferred supplementary TRICS data to have been provided during the appeal process, the absence of such data has not resulted in additional analysis or work in the appeal process, just reaffirmation of concerns reached at the application stage. In the absence of such additional data, a planning judgement has to be exercised on the basis of the information available. It will be evident from the main decision that I consider such a judgement can reasonably be made from this information. The absence of additional information sought does not amount to unreasonable behaviour.
8. Similarly, in relation to the fourth refusal reason, the absence of additional traffic data to inform a fuller analysis of the impact on the living conditions of neighbouring occupiers at the appeal stage does not necessarily invalidate findings that can be made on this issue at the application stage. Harm in relation to the issue is a matter of planning judgement. This can include amongst other matters the representations made by interested parties on this issue and also the absence of such representations.
9. Furthermore, the absence of technical information on the extractor unit has not resulted in additional work at the appeal stage through analysis of that information. If the development had been acceptable otherwise, a planning condition could have been used to obtain relevant information and ensure operation of the unit does not adversely affect residential amenity.

Conclusion

10. My findings are that the applicant has not acted unreasonably in contesting the appeal in relation to the matters raised by the Council. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR