



Costs Decision

Site visit made on 28 July 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3262812 Hambrook Farm, Thornhill, Royal Wootton Bassett SN4 7RZ

- 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 and Mrs Williams for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for demolition of existing barn and erection of a new dwelling with associated works.
-

Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) acting contrary to established caselaw, (ii) making inaccurate assertions about the proposal, (iii) failing to substantiate the second refusal reason that relates to harm to character and appearance of the area, and (iv) by preventing development which clearly should have been permitted having regard to its accordance with the development plan, national policy and other material considerations.
3. An important factor in the assessment of this appeal is the fallback position as provided by the existing approvals that relate to the site. In their appeal submissions, the appellants refer to caselaw on this issue which it is claimed has been ignored by the Council. However, the Council officer's report comments on the extant approvals for the site. Also, it discusses the weight to be attributed to the fallback position having regard to the possibility of the approved schemes being implemented and the differences with the appeal development. As such, I am satisfied the fallback position has been treated by the Council as a material consideration in its assessment.
4. Caselaw on the matter (for example *Gambone v Secretary of State for Communities and Local Government* [2014] EWHC 952 (Admin)) has established that once the fallback position has been determined as a material consideration, the question for the decision-maker is the weight to be attached to it. Court judgments have not dictated the level of weight that should be attached to such matters in the assessment of planning applications. As such, the Council was entitled to form its view that the fallback position attracts little if any weight, although I have arrived at a different conclusion on the matter.

Therefore, I am unconvinced the Council has acted contrary to established caselaw.

5. The Council officer's report also mentions the Halfway Firs appeal decision¹, which is referred to by the appellants in support of the proposal. The Council's view that the development allowed under this appeal is materially different to the appeal scheme is reasonable as it relates to another development away from Hambrook Farm. As such, it is entitled to form a view that it is not bound by this decision.
6. The Council officer's report is incorrect in stating that the appellants' submissions indicate the fallback conversion schemes are prohibitively complex and expensive. In this regard, the Council has made inaccurate assertions about the proposal. However, through the appeal process, the Council has acknowledged the error but still maintains the appeal should be dismissed with limited weight attributed to the fallback position for different reasons. Therefore, the evidence indicates it would have refused planning permission, regardless of the mistake in the officer's report. As such, an appeal would have been required in any case and so the unreasonable behaviour has not led to unnecessary expense.
7. The Council's second refusal reason suggests the proposal would harm the openness and rural character of the countryside and so would be contrary to development plan policies. The reason for the purported harm is that the proposed building would be taller and have a larger footprint than the existing barn. It is undisputed that the proposal would lead to a larger building in a rural location. While I have arrived at a different conclusion, the impact of a development on the character and appearance of an area is a planning judgement. The Council's concerns are presented succinctly but nevertheless they are based upon aspects of the scheme that are not contended. As such, I am satisfied the second refusal reason has been properly substantiated.
8. I have found the proposal would be contrary to development plan policies in respect of the suitability of its location. While I then go on to find the fallback position justifies a departure from development plan policies, this assessment involves attributing weight to the factors for and against the scheme. In this context, it is fair of the Council to decide to refuse planning permission, albeit I have arrived at a different conclusion. Therefore, the Council has not prevented development that clearly should have been allowed.
9. As such, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. An award of costs is not justified.

Jonathan Edwards

INSPECTOR

¹ Appeal reference number APP/Y3940/W/18/3200095