



Costs Decision

Site visit made on 7 September 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

**Costs application in relation to Appeal Ref: APP/C3105/W/21/3276611
Part of OS Parcel 5900, East of Broughton and North Newington, Banbury
Road, North Newington/Banbury, Oxfordshire OX15 6AA**

- 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 Dr Carl Evans for a full award of costs against Cherwell District 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) for the conversion of an existing barn to a single large dwellinghouse.
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Decision

1. The application for an award of costs is allowed in part, in accordance with 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 thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably in respect of the substantive matters under appeal by failing to provide evidence that the appeal site was in a mixed use on the requisite date as is asserted. He also contends that by questioning the physical works outlined that the Council failed to assess the proposals on the correct basis. Finally, he considers that the concerns raised in relation to the proposed curtilage could have been overcome by a condition.
4. PPG further indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal on appeal or refuse permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. The permitted development class relied upon in this case depended upon the site being used solely for an agricultural use on a specific date. The distinction in land use between agricultural and equestrian uses where horses are kept is

not necessarily straightforward and has been subject to caselaw¹. It is therefore likely to turn on a matter of fact and degree in any given case.

6. Paragraph W(3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) states that the local planning authority may refuse an application where, in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any limitations or restrictions specified in the applicable part of the Order. At the time the Council made its determination, although the applicant provided a statement regarding the planning history, there was otherwise limited factual evidence submitted on this matter. In these circumstances, it was not unreasonable for the Council to draw upon general available evidence including the planning history of the site and observations derived from officer visits.
7. As part of the subsequent appeal submission, the appellant provided significantly more specific evidence in relation to the use of the appeal building and its curtilage. It will be seen that I have referred to this in my decision in finding in favour of the proposal. However, this evidence was not before the Council when they made their determination, and it was necessary for the applicant to provide it as part of his subsequent appeal. Consequently, although the Council's appeal statement with respect to this additional evidence is somewhat perfunctory, overall, their behaviour with respect to this matter did not incur unnecessary expense for the appellant as part of the appeal process.
8. Central to the appeal was a fundamental disagreement between the parties as to whether the extent of building works associated with the proposal would fall within the remit of the permitted development relied upon. Again, the relevant caselaw reflects that this is a complex area but essentially turns upon a planning judgement. I am satisfied that the Council clearly outlined their concerns in the delegated report and appeal statement to substantiate the basis upon which they formed their judgement. Accordingly, although the applicant disagreed with it, this does not amount to unreasonable behaviour within the meaning of the PPG.
9. Nevertheless, in relation to concerns regarding the size of the curtilage the Council concede² that had it been the only issue, the matter could have been addressed through an appropriately worded planning condition. However, this is not evident from the delegated report³ which refers to the curtilage outlined by the red line being problematic as it conflicts with paragraph X of the Order. There is no reference to the T line annotated on the submitted plan denoting the curtilage. Nor did the Council suggest that this area would fail to fulfil the requirements of the Order. Furthermore, concerns were advanced as part of the Council's statement of case that the T line appeared arbitrary.
10. It is understandable in these circumstances that the appellant felt impelled to prepare additional material regarding the proposed curtilage as part of their appeal submission. If the Council had indicated from the outset that a condition would sufficiently address their concerns, then this matter need not have been the subject of dispute at the appeal. Had they done so, it follows that the work

¹ Referred to in paragraph 2.6 of the Appellant's Response to Council's Statement & Costs application

² Paragraph 2.7 Council's Statement of case

³ Paragraph 8.20 Council's delegated report

and associated expense necessary to prepare the appellant's appeal case would have been reduced.

11. Accordingly, in relation to this aspect of the appeal I find that the Council's behaviour was unreasonable. Furthermore, there is a direct causal link from the behaviour that resulted in unnecessary additional expense in making the appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Helen O'Connor

Inspector

Costs Order

13. 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 Cherwell District Council shall pay to Dr Carl Evans, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the proposed curtilage (3rd reason for refusal on the Council's decision notice); such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Cherwell 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.