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## Costs Decision

Hearing held on 29 September 2021

Site visits made on 17 & 29 September 2021

**by Paul Jackson B Arch (Hons) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 01/11/2021**

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### **Costs application in relation to Appeal Refs: APP/N0410/W/20/3265148 & APP/N0410/Y/20/3265149**

#### **Allerds Farm, Crown Lane, Farnham Royal SL2 3SF**

- 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 Dylon 2 Ltd for a partial or full award of costs against South Bucks District Council.
  - The hearing was in connection with an appeal against the refusal of applications for planning permission and listed building consent for demolition of existing buildings (save for the Grade II barn) and erection of four houses (3 new dwellings) with ancillary coach house / garages and landscaping together with the repair and refurbishment of the Grade II barn and its incorporation as part of the dwelling house to be erected on Plot 2.
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### **Decision**

1. The application is refused and no award of costs is made.

### **Reasons**

2. The application was made in writing and responded to in writing. The applicant made an oral rebuttal at the Hearing.
3. 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 or wasted expense in the appeal process. The PPG says that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal or in relation to procedural matters. This can be by unreasonably refusing or failing to determine planning applications, or by unreasonably defending an appeal.
4. With respect to each reason for refusal (RFR), the applicant considers unreasonable behaviour has been demonstrated in respect of the substance of the matters concerned and the procedure followed. Dealing with each in turn:

#### *RFR 1 Green belt*

5. No clear evidence emerged at the hearing to show that agricultural use ceased as long ago as 1980. The appeal decision in January 2009<sup>1</sup> indicated that the application in that case referred to 'farm buildings'. The Inspector visited the

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<sup>1</sup> APP/N0410/A/08/2081982

site and described the buildings as 'mainly farm buildings', going on to find the proposed development of 2 detached houses to be inappropriate development in the Green Belt.

6. Turning to the suggestion that housing land supply should be taken into account in considering whether development may or may not be inappropriate, only the supply of affordable housing is mentioned in paragraph 149 of the NPPF, and then in connection with previously developed land. If the Council's judgement that the site was not previously developed land was reasonable, then this matter falls away. The weight to be given to housing land supply in general falls to be brought into the overall balance after considering whether there is any other harm.
7. The redevelopment of the Wyevale site with a small housing scheme to the north came about because of the prevailing use of that site as a garden centre with a different distribution and collection of buildings. In my opinion Council officers were entitled to come to a different conclusion with respect to the appeal site especially as, for various reasons, there had been no successful applications for change of use.
8. Moreover, the effect on openness is essentially a matter of judgement. The introduction of 4 new detached houses in place of a bungalow and ancillary buildings could be reasonably considered to have a greater effect on openness because of their 2 storey bulk and distribution, especially in the south west corner which is currently free of buildings. I have decided otherwise and that the removal of the large metal-clad building to the east of the site constitutes a significant reduction in built form, but it would not be unreasonable to form an opinion that it has typical characteristics of many other utilitarian agricultural buildings. It is certain that some buildings on the site are agricultural in origin and the listed barn certainly was. The position that the Council took was that even if it were concluded that the site is entirely previously developed land, the 4 new detached dwellings would have a greater effect on openness, in which case very special circumstances would have to be demonstrated to justify the proposal. It is not unreasonable.

#### *RFR 2 Character and appearance*

9. The assessment of landscape character and visual impact is also essentially a matter of judgement. The vehicles spread around the site are still fundamentally mobile and the hardstanding in this case does not compromise openness in itself, indeed many farmsteads have large areas of hardstanding. The assessment that domestic gardens and the attendant paraphernalia may detract from character and appearance in addition to the dwellings is not unreasonable. As the Council's Conservation and Listed Buildings Officer stated 'Whilst each of the house designs may work in an urban setting, here they are out of place'. That is not an unreasonable statement.
10. The phrase 'urban fringe' is unhelpful in assessing character. Within Crown Lane there are places where one is surrounded by development and others where there is nothing but hedges and open fields. The appeal site is surrounded on 3 sides by open fields criss-crossed by footpaths which allow walkers to experience open countryside, albeit with development not far away.

11. The approval of a detached dwelling with detached garage and store together with refurbishment of listed barn to form games room in 2014<sup>2</sup> does not in itself support the principle of the much increased residential use now proposed. There is already a dwelling on the site. Accordingly, I do not find the Council's position unreasonable.

*RFR 3 The SAC*

12. The appellant withdrew this ground for costs at the last minute. The Council had received advice from Natural England that it was likely there would be a significant effect on the Burnham Beeches SAC. No commitment to making a contribution towards mitigating the effect had been made by the appellant who at the time the Council considered the application, disputed that a contribution was necessary.
13. The Council had to take time and effort to respond to this element of the costs application but in the interests of the efficiency of the planning system, I have decided that whilst an award against the appellant could be justified, the amount would be so small as to be not worth the time spent on agreeing the amount and the attendant administration. Nevertheless an important principle needs to be recorded here that all parties are expected to behave reasonably.

*RFR 4 Affordable housing*

14. The important point is that no legal undertaking had been made to the Council with the application and evidence from a registered provider was not provided until documents were submitted with the appeal. The appellant offered no justification to indicate why a smaller unit could not be included in the redevelopment mix which would satisfy the Council's preference for on-site affordable housing. I consider that an off-site contribution is appropriate and acceptable under Government and local policy guidance, but the Council was perfectly justified in seeking on-site provision at the time it considered the scheme and asking for an explanation. It did not behave unreasonably in this respect.

*RFR 5 Refuse and waste*

15. It is not unusual for local authorities to refuse planning applications partly on the basis of inadequate provision for dealing with domestic waste. Such matters are normally thought about by the responsible professionals when developing the design and agreed in advance in consultation with the Council's waste and recycling personnel. The layout of the site was not revised until a new drawing was provided at the time of the appeal. This was going to be required in any event. There may not have been similar provision for waste on the similar sized scheme at Farnham Royal Nursery where it was dealt with by condition but there are differences in layout.
16. The consultation response from the Council's Waste Policy and Efficiency Officer was 'Each resident to present their containers in a safe & suitable location at the property boundary adjacent to Crown Lane. Collection teams and vehicles will not access the drive'. No provision had been made by the appellant's 'thinkarchitecture' consultants. The appellant was not put to any additional expense and no unreasonable behaviour has been shown to have occurred.

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<sup>2</sup> 14/01471/FUL

*RFR 6 The listed building*

17. It is not the Council's responsibility to carry out an assessment of significance. The NPPF refers at paragraph 194. The Conservation and Listed Buildings Officer's assessment followed specific mention of the statutory duty in S66 of the LBCA and concluded 'this form of aspirational urban development will remove the farm's rural character, and with it will divorce the barn from its agricultural origins and its simple rustic setting'. The consequent reason for refusal is not unreasonable. The officer's report then goes on to consider the public benefits. There was no reason for the officer not to consider the scheme had disadvantages, especially bearing in mind the conditional approval to a detached dwelling including refurbishment of the barn to form a detached games room in 2014. The Council did not behave unreasonably.

*The decision to refuse*

18. Bearing the above in mind, nothing in the applicant's submissions indicates that the Council behaved unreasonably in reaching the decision that it did, even taking into account the persistent and serious need for housing and especially affordable housing. Turning to the procedural basis for the claim for costs and the alleged inconsistencies between the officer's position in 2014 and now, the essential point is that the 2 proposals are completely different in scope and form. The proposal for a new farmhouse replacing an existing dwelling leaving the listed barn on its own facing a detached garage would be an entirely different prospect. I have considered the cogency of the Council's evidence and the decision at Wyevale Nurseries above.

**Conclusion**

19. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated. For the above reasons, the application fails.

*Paul Jackson*

INSPECTOR