



Costs Decision

Site visit made on 18 October 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Costs application in relation to Appeal Ref: APP/U1105/W/21/3278488 Barns at Higher Hawkerland Farm, Sidmouth Road, Aylesbeare, Exeter EX5 2JW

- 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 C J Wyatt and Son for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for the change of use and subdivision of Barns 1 and 2 and part of Barn 3 from agricultural use to form 10no. storage and distribution units (Use Class B8), including external alterations to provide a roller shutter door and a by-pass door to each unit, provision of infill cladding to the existing hit & miss boarding to the external walls and provision of a gravel finish to the existing earth hardstanding to form Yard 1 and Yard 2 to be used for additional external storage associated with the units (retrospective).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant has set out in written submissions the reasons why a full award of costs is sought. This include, in summary, that the Local Planning Authority (LPA) had acted unreasonably because planning permission should have been granted. It is argued that the LPA failed to produce evidence to support its position that the proposal would result in a substantial increase in traffic thereby harming residential amenity by reason of noise and dust. It is said that the LPA relied on vague, generalised and inaccurate assertions over traffic levels and whether the proposal was a farm diversification scheme. Finally it is argued that the LPA did not consider whether a restriction on hours of the traffic movements would address their concerns.
4. The LPA has responded setting out their case and this includes that the Class B8 storage or distribution use extends to a fairly sizeable floorspace and could encompass both light vehicles and large lorries. The LPA has explained that in the absence of any means of control a worst case scenario has been reasonably presumed in which there are frequent vehicle movements throughout the day and potentially into the night. The LPA believe that it is also reasonable to conclude that high volumes of traffic running adjacent to dwellings and gardens

would give rise to noise and air quality issues. In the LPAs judgement previous farm traffic did not reach the same levels. It is the LPAs view that, in conclusion, its decision was based on reasoned judgments regarding the level of harm to local residents and fairly concluded that the benefits were not outweighed by the harm.

5. Looking at these matters, the planning report fairly summarised the traffic movement data available at that time and also acknowledged that the tenant which it is said had generated about 40-50% of the traffic movements had since vacated that unit.
6. Two local residents had raised concerns with the impact of the traffic movements and this was explained as well as those residents who were satisfied that the proposal was acceptable in terms of their amenities. One local residents raised concerns with the impact of dust from a surface of the unbound section of the drive. Another resident raised concerns with regard to noise and disturbance. There was, therefore, some background information that supported the LPA's view that there was harm to the amenities of some residents from the traffic movements which pass along the drive and near some of the residential properties. It was a matter of judgement as to how much weight to attach to the previous farm traffic movements associated with the cattle rearing business as a comparison with the movements from the new business uses. The considerations of the LPA on the level of movements, and any associated noise and dust, were therefore not without some substance and raised sufficient and relevant planning concerns which were a matter of judgement so as not to be unreasonable.
7. The planning report did raise concerns that the B8 use was not part of a genuine farm diversification proposal, not compatible with farming activity and was therefore contrary to the requisite policy approach. This assessment did not especially emphasise the farming information available on this matter at the time, albeit that the submitted information was mainly limited to explanations for the reasons that the cattle business was not able to continue. However, the farming concerns of the LPA were not referenced directly in the reason for refusal which focused on the traffic impacts of the development. I can understand that the applicant felt the need to set out information to further explain the continuing farming activities at the appeal stage. Nevertheless, this was essentially supplementary information rather than addressing the main issue in the reason for refusal and the substantive disagreement between the parties. Consequently, I do not consider that overall on this matter the approach of the LPA, having regard to this background, amounts to unreasonable behaviour.
8. The planning report did assess whether planning conditions attached to an approval could make the development acceptable. This assessment included an commentary on whether a condition limiting the hours of operation would be effective. While I disagree with the conclusion, the analysis and comments on this matter were not without some merit and therefore it was a matter of judgement as to whether such an approach could be taken.
9. Drawing all these matters together, in relation to the level, character and effect of traffic movements, the LPA conducted a reasonable assessment of the proposal, based on the evidence before it, and made a planning judgement on the considered level of harm. These considerations were not without some

basis and, while I have come to a different view at the appeal stage based on the further traffic survey data and evidence now available, I do not consider that the LPA's approach and behaviour was unreasonable in reaching the conclusion that it did and which was expressed in the reason for refusal.

10. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably and the appeal could not have been avoided. Accordingly, the applicant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR