



Costs Decision

Site visit made on 22 June 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Costs application in relation to Appeal Ref: APP/Y3940/W/21/3283827 Furze Farm, Sherfield English Road, Landford SP5 2BD

- 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 M Lucas for a full award of costs against Wiltshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for retention of internal and external works to former stable building, use as tourist accommodation and use of land for agricultural purposes.
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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 thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant has applied for an award of costs on the basis that the Council refused the application even though the applicant had already submitted his appeal. This resulted in a second statement of case having to be prepared. The Council issued a decision notice after the appeal was lodged. However, jurisdiction for the determination of the application passed to the Planning Inspectorate once that appeal had been lodged.
4. Given the appeal had been lodged, the applicant was under no obligation to prepare a second statement of case in response to this decision notice. He could have waited until he received the Council's statement of case. However, he chose to submit a further statement instead. In any case, it is common in non-determination appeals for the Council to set out its putative reasons for refusal. The applicant would have had to respond to those matters and therefore I do not consider the applicant has been put to unnecessary or wasted expense due to the behaviour of the Council in this regard.
5. The applicant asserts that had the planning officer visited the site between Summer 2020 and April 2021, it would have been evident that the stable was capable of accommodating horses. From what I have read, it is clear that the Council found the existence of the plinth made the building unsuitable for use

- as a stable and its external appearance made it appear as a domestic building rather than a stable.
6. The submitted photos did not show the interior of the building and the existing floorplans did not provide evidence of how the building would be laid out to accommodate horses. Had the Council visited the site, it may have been possible to confirm this. In any event, the applicant would have been well aware of the Council's concerns given this formed part of the Council's reason for refusal for an earlier, almost identical scheme¹ for the conversion of the stable building to holiday accommodation. In view of this, the applicant could have provided photographic evidence or detailed plans to demonstrate that the building was capable of being used as a stable.
 7. In addition, the applicant contends that the Council gave no indication that it was considering a refusal of the scheme as the planning officer continued to negotiate on the scheme. The Council has provided a copy of an email exchange following the refusal of a previous scheme, almost identical to the appeal scheme, for the conversion of the building to holiday accommodation. The Council's email of 5 July 2021 is clear that a further application for a holiday let would not be supported. This advice was provided to the applicant before he submitted the application that is the subject of this appeal who would have been aware of the Council's position.
 8. The Council did continue to negotiate on the scheme to reduce the number of reasons for refusal. However, such an approach is encouraged by the Government and the Planning Inspectorate in order to narrow the issues on appeal. The Council has not therefore behaved unreasonably in taking this approach.
 9. The applicant considers that the Council's principal concern relates to the building being not in accordance with the plans but the only thing not in accordance with the plans at the time of the application was the unfinished cladding. He therefore considers that the proposal accords with Core Policies 39 and 48 of the Wiltshire Core Strategy 2015. Whether or not a proposal accords with policy is a matter for the decision-maker when assessing the issues and merits of the case. It will be seen from my decision that I have concluded the proposal would not accord with these policies, it therefore follows that I do not find the Council has behaved unreasonably in reaching this conclusion.
 10. The applicant also states that nitrates were not raised as an issue at the time of the first refused application for the conversion of the building. Also, that Natural England (NE) changed its mind about the provision of a wildflower meadow as mitigation in terms of nutrient neutrality resulting in the applicant having to prepare a further nitrates report.
 11. I do not have the full details of the proposed mitigation to deal with an excess load in nitrogen within the Solent catchment associated with the first scheme for conversion. However, from the submissions it is evident that there was some change in the mitigation strategy proposed between the first and second schemes and queries about the change of use of land.
 12. It appears that NE objected to the adjusted mitigation strategy and therefore it formed a reason for refusal. The Council would not have known about this prior

¹ Council Ref: 20/11334/FUL

to the appeal being submitted as the applicant lodged the appeal before NE's response was received by the Council. Given that the proposed mitigation differed between the two schemes, there was nothing unreasonable in objecting to the second scheme if the mitigation was inadequate.

Conclusion

13. In light of the above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated. An award of costs is therefore not justified.

Rachael Pipkin

INSPECTOR