



Costs Decision

Site visit made on 30 August 2022

by L Cuthbert BA(Hons) MSc MRTPI

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

Decision date: 6 October 2022

**Costs application in relation to Appeal Ref: APP/Y3940/W/22/3296262
Bybrook Meadow, Ashley, Box, Wiltshire
Grid Ref Easting: 380928, Grid Ref Northing: 168256**

- 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 A Lowin for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for change of use and conversion of agricultural building to a single dwelling with associated development, including installation of a septic tank.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the Planning Practice Guidance sets out the examples of unreasonable behaviour by local planning authorities and the applicant considers that the Council have exhibited unreasonable behaviour on a number of these, which I will now go through in turn.

Preventing or delaying development which should clearly be permitted, and refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal

4. The applicant contends that the Council failed to consider the proposals before them on their merits in accordance with the application that was made. No structural assessment was submitted with the application and the incorrect plans, both existing and proposed, were submitted at the time of the original planning application. Therefore, the Council were entitled to reach the view that the evidence was insufficient and that in the absence of appropriate evidence, that the application before them was a 'new build dwelling'. Whilst the correct plans and a structural assessment were subsequently submitted with the appeal, I consider that the Council had reasonable concerns about the impact of the proposed development which justified its decision, based on the information submitted with the original application.

5. Whilst it was unfortunate that the Council refused the application the day after advising the applicant that they had concerns regarding the application, which must have caused the applicant some frustration, I find nothing to suggest that a decision was not reached on the basis of the merits of the proposal, as submitted to them by the applicant. Both the structural assessment and the correct drawings would have had to have been prepared regardless of their decision. Therefore, I find no substantive evidence that the applicant incurred any additional expense as a result of this decision.
6. Furthermore, despite the submission of the structural assessment and corrected plans, the Council still found the proposal to be unacceptable. Therefore, any further dialogue regarding these matters would not have resulted in the appeal being avoided altogether nor would it have narrowed the issues to be considered.
7. In terms of the alleged failure of the Council to critically assess the consistency of the relevant Development Plan policies on which it relies with the National Planning Policy Framework 2021 (the Framework), paragraph 219 of the Framework states that policies should not be regarded as out-of-date simply because they were adopted before the Framework. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Therefore, the amount of weight to be given to development plan policies is a matter of planning judgement for the decision maker. Whilst I agree that a greater assessment of the consistency of the relevant policies of the Development Plan with the Framework could have been carried out by the Council, I have carried out my own assessment and concluded that weight can still be given to the relevant policies of the Development Plan. This has not resulted in any unnecessary or wasted expense.
8. Furthermore, I have found in my appeal decision that the proposal would be unacceptable. There is no basis for considering that the Council's decision has prevented or delayed development which should clearly be permitted, and they were not unreasonable coming to the decision based on the information before them at the time.

Failing to produce evidence, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis

9. In the circumstances of the case, it was not unreasonable for the Council to have concerns relating to the structural integrity of the building, given the nature of the proposal. There was no specific obligation for the Council to undertake its own structural evidence to contest that submitted by the applicant. It is for an applicant to submit information at the planning application stage in support of his/ her case and it was open to the applicant to undertake a structural survey at the time of submission. The Council determined the application on the basis of the information before it at the time and that was not an unreasonable course of action, in my view.
10. On a similar vein, there was no specific obligation on the Council to undertake its own measurements regarding the existing building on site. The Council determined the application on the basis of the plans before them and again, this was not an unreasonable course of action in my view, given that the incorrect existing and proposed plans were submitted with the application. Whilst these plans were corrected as part of the appeal process, the Council

remained concerned regarding the structural integrity of the existing building, meaning that they still considered that the proposal involved the erection of a new building on the site. Whilst I have come to a different conclusion on this particular matter, the Council's decision was not unreasonable.

11. It was also not unreasonable for the Council to come to a different conclusion in regard to the impact on the Cotswolds Area of Outstanding Natural Beauty (AONB), between the original assessment for the agricultural building and the use of the building for the proposed residential use, which is an entirely different use. Whilst the Officer's report and the Council's Statement of Case deal with the matter of the AONB rather briefly, there is no specific obligation on the Council to prepare a visual assessment and the Council did reasonably consider and explain the impact of the proposal.
12. Accordingly, the Council has provided sufficient evidence to support all four of its reasons for refusal and its overall decision.

Not determining similar cases in a consistent manner

13. The Council's appeal statement is vague in regard to the differences between the proposed scheme and the scheme approved at Broadlands Barn. However, I note that in their Statement of Case, the Council notably mention that the scheme at Broadlands Barn carried out the assessment as required by Core Policy 48 of the Wiltshire Core Strategy (Core Strategy) (adopted January 2015), demonstrating that Broadlands Barn could not be practically used for employment, tourism, cultural or community uses. Whilst I do not have the details of this assessment, this is something which I have found that the appeal proposal has failed to carry out. Therefore, based on the limited evidence before me, there appears to be differences between the two schemes which have justified the Council's decision. I therefore do not consider that the Council have behaved unreasonably in this regard.

Failure to review their case promptly

14. The Council have adequately substantiated their reasons for refusal in their Statement of Case. Whilst I ultimately found in favour of the applicant in terms of both the existing building and its general conformity to the approved agricultural building, and its structural integrity, this did not change the overall conclusion that the proposal was unacceptable. The Council was entitled to reach the conclusion that they did, even based on the additional information submitted with the appeal, and I find no unreasonable behaviour was exhibited by the Council in this respect.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Laura Cuthbert

INSPECTOR