
Costs Decision

Site visit made on 20 September 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 October 2022

Costs application in relation to Appeal Ref: APP/F2415/W/22/3297410 Home Farm, Gaulby Lane, Stoughton, Leicester LE2 2FL

- 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 Dhada Motors Ltd for a full award of costs against Harborough District Council.
 - The appeal was against the refusal of planning permission for the conversion of an agricultural building into three residential dwellings.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant's concerns relate to the Planning Committee's assessment of a fallback position on the appeal site arising from a previous grant of Prior Approval under the provisions of Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO).
4. The Council has set out the reasons for its decision with reference to both the development plan and the fallback position as material considerations. They are referred to in its Decision Notice. The Council contends that, as a matter of planning judgement, the weight given to the fallback position did not outweigh the conflict with the development plan.
5. Based on the evidence before me, I cannot be sure that the proposed scheme is identical to that previously granted planning permission by virtue of Article 3(1) and Class Q of the GDPO. However, if there was a material difference between the 2 developments, this has not been defined by the Council.

6. The earlier Class Q planning permission establishes that building is capable of conversion for use as 3 residential units. It remains extant. Notwithstanding that the applicant was seeking to open up alternative opportunities for the implementation of the development through a particular funding mechanism – a matter that the Council conceded would not necessarily prevent the earlier permission from being implemented, the permission establishes the principle of residential development on the site.
7. Subsequently, the Council has raised no concerns in relation to any specific detail of the proposal other than to the points of principle relating to housing distribution and the protection of the Green Wedge. In the case of the Green Wedge, the Council did not identify any conflict with its aims or specific harm, only that it was not a use listed as being supported in the policy. A finding that the development would not enhance the building's immediate setting is not an identification of harm.
8. In the circumstances where the principle of a residential use has already been established, and in the absence of any demonstrated planning harm arising from a development that would largely mirror that benefitting from planning permission otherwise, I find the Council's approach has not been clearly justified.
9. In that absence, the Council's attribution of limited weight to the uncontested fallback position, a material consideration well-established in case law, was unreasoned and unsound. Its decision was therefore also flawed in the particular circumstances of the case.
10. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. For this reason, and having regard to all other matters raised, an award for costs is therefore justified.

Costs Order

11. 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 the Harborough District Council shall pay to Dhada Motors Ltd the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR