
Costs Decisions

Hearing Held on 5 July 2022

Site visit made on 14 July 2022

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an Inspector appointed by the Secretary of State

Decision date: 14 October 2022

Appeal A: Costs application in relation to Appeal Ref:

APP/X0415/W/22/3297304

Land adjacent to Hampden Farm Barn, Greenlands Lane, Prestwood, Buckinghamshire HP16 9QX

- 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 Buckinghamshire Council (East Area -Chiltern) for a partial award of costs against Mr and Mrs Kirby.
 - The hearing was in connection with an appeal against the refusal of planning permission for "outline application with all matters reserved other than access for the erection of 10 dwellings including 4 affordable homes".
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Appeal B: Costs application in relation to Appeal Ref:

APP/X0415/W/22/3292251

Land adjacent to Hampden Farm Barn, Greenlands Lane, Prestwood, Buckinghamshire HP16 9QX

- 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 Buckinghamshire Council (East Area - Chiltern) for a partial award of costs against Mr and Mrs Kirby.
 - The hearing was in connection with an appeal against the refusal of planning permission for "outline application with all matters reserved other than access for the erection of 12 dwellings including 5 affordable homes, and the conversion of the stables block to provide a further 1 dwelling."
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Decision

1. The applications for the award of costs in Appeals A and B are refused.

Procedural Matters

2. Each cost claim application has been considered on its merits but to avoid duplication, the two applications have been dealt with together, unless otherwise indicated. For the sake of clarity, the cost documents have been summarised and any contents relating to the merits of the proposals excluded.
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The submissions for Buckinghamshire Council (East Area – Chiltern)

3. Throughout the application process, the appellants have persisted with incorrect arguments relating to basic planning concepts. There are also aspects of the main planning issues where little or no substantive evidence has been offered. The appellants have also been obstructive and unwilling to cooperate with the completion of legal agreements. They have persisted with alleging that equestrian land automatically equates to Previously Developed Land (PDL). To be PDL, land must be within the curtilage of a building. In their applicants' rebuttal, this is accepted.
4. Throughout the appeal process, the appellants have persisted with the argument that the change of use of the stables block can be considered as outline. Outline planning permission means a planning permission for the erection of a building and does not therefore include changes of use. The appellants contend that the validation of the Appeal B application confirms their approach, but this is incorrect. In fact, Councils can require further reserved matters details within a specified time period. The Council did not do that, but it does not change the fact that outline planning permission cannot be granted for a change of use, which is abundantly clear from the legislation. The application should have been made as a hybrid application, with the conversion applied for in full and the new dwellings applied for in outline.
5. A main issue for these appeals is the impact of the new dwellings on the openness of the Green Belt. No commentary whatsoever on openness has been provided by the appellants throughout the appeal process. The only reference is an agreement in the SoCG that the new dwellings would impact on openness. The Council does not know what the appellants' stance is on openness, and what level of harm they consider arises. At the hearing, this issue was cleared up, when the relevance of an exception to inappropriate development was questioned. The appellants then conceded the scheme would cause substantial harm to the openness of the Green Belt, otherwise they would have argued this exception was relevant.
6. The appellants' case regarding the impact of the development on landscape character is not supported by any objective evidence. The appellants acknowledge in their own costs claim that there is a need for this evidence but they offer a very scant assessment on the landscape, stating that vegetation blocks certain views and that the development would not be overly prominent. They completely fail to recognise what constitutes landscape character or distinguish it from the visual effects on the landscape. They have not established any landscape or visual baseline to assess the effects, and simply rely on unqualified conjecture. The appellants have demonstrated a significant lack of understanding about context.
7. The Council's legal team draft legal undertakings on the basis of an undertaking for their costs being met by appellants. The Council has written to the appellants' solicitor requesting an undertaking for the costs and copies of the title documents. The appellants have not been forthcoming and have refused to meet the Council's costs in this regard, or supply title documents. The appellants states that they only received communication from the Council

on the 30th June but an email was sent on 20th June, to which the Council had no response.

8. Following the submission of the agreed SoCG, the appellants submitted two further late documents, on 23rd and 30th June, one of which purported to be a "note". In fact, this appears to repeat the issues set out in the SoCG, with further commentary. This is unreasonable behaviour to reinvent the agreed SoCG at such a late stage and has resulted in wasted and unnecessary expense for the Council in digesting this information and the necessary additional preparation for the hearing.

The response by Mr and Mrs Kirby

9. The incorrect statements in respect of PDL or the use of an outline application for a conversion and the consideration of matters related to landscape reflects is a matter of weight. The lack of cooperation between the parties within the appeals arises from a simply incorrect and unsubstantiated reference to the factual events. Their cost application simply ignores the factual position in respect of these matters as will be explained.
10. The appellants have complied fully with the requirements of pursuing the appeal process. They have sought to repeatedly engage with the Council, including making two additional planning applications to address all matters. All relevant information has been produced as part of the applications and there is nothing in the Councils' appeal statement which suggests otherwise, and the Council has not requested additional information in respect of landscape or related matters, which they now rely on within this application. Nothing new was introduced beyond that required to address the reasons for refusal.
11. The argument based on whether the stables block conversion can be made under an outline application fails to react to that position which is in any event a purely procedural matter capable of resolution. The information relied upon could have been presented to the Council prior to refusal if requested in time. The Councils position in this respect further ignores the reality of the situation, in that it did indeed determine the application as outline. Something which it claimed was fundamentally not possible.
12. In respect of the AONB, assessment is clearly based on the judgment of the effect of the proposals in context, all of which were set out by the appellants relying on the same base information and judgments contained within the officer reports and documents. That is clearly a matter of judgement for the decision maker and taking contrary views does not make it unreasonable. The reason for refusal in relation to bats on Appeal B has also been withdrawn, again with no prior notice as information has been supplied. That information would have been presented if the refusal had not been issued. The information confirms that there is no planning problem.
13. The misunderstanding of the definition of PDL is a difference of opinion and does not amount to unreasonable behaviour justifying a costs award. Critically, it cannot amount to a wasted expense as it needs to be considered by the Inspector. The Council is wrong to say the appellants equate land in equestrian use as being PDL. The appellants' approach is much more

considered, precise and supported by other Inspectors' decisions. Even in the decisions raised and relied upon by the Council it was not said that equestrian use was not capable of being PDL but rather the assessment depended on the facts of each individual case. That fact is agreed between the main parties.

14. The Council says the appellants are wrong in their interpretation of whether the conversion of the stable block can be considered as an outline. That demonstrates a difference of opinion in the approach. A difference of opinion does not justify a finding that costs should be awarded other than in extreme circumstances where a view could not realistically be held. The now withdrawn reason for refusal does not suggest that the conversion application could not be considered in outline. The Council's appeal statement considers that an outline application for the conversion of a building can be made.
15. The appellants have recognised throughout and have stated consistently the position in relation to the Green Belt and AONB issues. In respect of the openness question there is no challenge by the appellants to either the location, the purposes identified as being relevant or the harm that needs to be taken into account. As such there is no requirement on the appellants to go through such matters in detail. As such it is not a criticism that should support a cost claim.
16. The landscape consideration raised as a criticism has even less merit. The essential need is to address the reason for refusal as it represents a clear statement as to what the Council finds objectionable. There is no need or even advantage of seeking to go beyond that in seeking to appeal the refusals. This appears to have been a criticism created by the Council to present to the hearing and to defend against the appellants costs own application. Although landscape measures are clearly relevant with their significance reflecting the AONB location, it does not require a reference to all the available character reports or even detailed and extensive landscape evidence. The appellants in bringing forward its case, relied on the identification, as contained within the landscape character assessment and the repeated reference therein, of a landscape dominated by settlements, as a significant factor in the overall character of the area.
17. The suggestion made by the Council in respect of a lack of cooperation in respect of the legal undertakings and seeking to avoid paying for a solicitor (made in both this application and in its cost Rebuttal) is without foundation which the Council would be invited to withdraw. An email exchange demonstrates that the Council's website should have had a template and ultimately a draft version copied from a separate authority was used. It was anticipated that would be replaced by a specific and presumably standard document that the authority already had available to it, at some point during the appeal process. Since the submission of the appeals, the appellants have continued to press the Council for such a document. The appellants were sent documents but none of them were applicable. The situation came to a head before the hearing when the Council indicated that they could proceed with the draft, subject to the payment of fees, but this was of no assistance.
18. The further documents submitted did not reinvent the SoCG but sought to address additional matters to assist the Inspector, specifically where he asked

for matters to be clarified (in the Pre-Hearing Note). It is for the Inspector to decide whether to accept such information and in this case, he indicated at the opening of the hearing that he would. That does not provide any basis for a costs award as the Council received all such information in a timely fashion and was able to respond to it at the hearing if it chose to do so. In fact, that process would have assisted the Council.

Reasons

19. The Planning Practice Guidance advises that costs may 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.
20. Each party has to bear their own costs in pursuing a planning appeal. This necessitates preparing for issues at dispute which were highlighted in the agenda for the day of the hearing. In respect of previously developed land, the appellants have assessed the sites and they have referred to appeal decisions to inform their case for each appeal proposal. In the main decision on APP/X0515/W/3292251, it was concluded that the conversion could not be considered as an outline, but this does not confirm the appellants case to be without substance. In this regard, the appellants have pointed out that the application was validated as an outline by the Council and the issue was not raised at this stage.
21. Both at the hearing and in the appeal statements, the appellants have commented upon character and appearance considerations. Whilst their evidence has not found support through the dismissal of the two proposals, the appeal statements address character and appearance issues, including the AONB, on their commentary on reason for refusal 2 within their appeal statements and associated appendix 1s containing a planning policy assessment.
22. During the hearing, there was discussion on the effects of the proposals on the openness of the Green Belt, as acknowledged by the Council. Irrespective of whether they detailed this issue in their appeal statement, it is clearly a matter that the Council was required to prepare for, given their refusal reason on this issue, and its listing as a discussion point on the hearing agenda. Therefore, even if the appellants had shown unreasonable behaviour in not providing explanation upon it, its claim of unnecessary expense is not well-founded.
23. With respect to the s106/UUs, the appellants are entitled to present their own legal undertakings and therefore, the alleged lack of cooperation is of no relevance. In terms of the two additional documents presented prior to the hearing, the Inspector accepted them at the hearing. The Council had no objections at the time and one document was in response to the Inspector's Pre-Hearing Note whilst the other was largely a reiteration of information already submitted.

24. For all these reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in respect of both appeals.

Jonathon Parsons

INSPECTOR