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## Costs Decisions

Hearing Held on 16 August 2022

Site visit made on 17 August 2022

**by K Savage BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 October 2022**

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### **Costs application 1 in relation to Appeal Ref: APP/M2840/W/22/3297806 Barns south of 19 Hardwick Village, Hardwick NN9 5AL**

- 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 Richard Reynolds (Rookery Farmers Limited) for a full award of costs against North Northamptonshire Council.
- The hearing was in connection with an appeal against the refusal of planning permission for demolition of an agricultural building and replacement with two detached, two storey, five bedroom dwellings, access, turning area, hardstanding for parking, boundary treatments and landscaping.

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### **Costs application 2 in relation to Appeal Ref: APP/M2840/W/22/3297806 Barns south of 19 Hardwick Village, Hardwick NN9 5AL**

- 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 North Northamptonshire Council for a full award of costs against Mr Richard Reynolds (Rookery Farmers Limited).
- The hearing was in connection with an appeal against the refusal of planning permission for demolition of an agricultural building and replacement with two detached, two storey, five bedroom dwellings, access, turning area, hardstanding for parking, boundary treatments and landscaping.

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### **Costs application 3 in relation to Appeal Ref: APP/M2840/W/22/3297826 Land west of Hardwick Village, Hardwick, Wellingborough NN9 5AL**

- 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 Richard Reynolds (Rookery Farmers Limited) for a full award of costs against North Northamptonshire Council.
- The hearing was in connection with an appeal against the refusal of planning permission for erection of a new grain store.

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### **Costs application 4 in relation to Appeal Ref: APP/M2840/W/22/3297826 Land west of Hardwick Village, Hardwick, Wellingborough NN9 5AL**

- 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 North Northamptonshire Council for a full award of costs against Mr Richard Reynolds (Rookery Farmers Limited).
  - The hearing was in connection with an appeal against the refusal of planning permission for erection of a new grain store.
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## Decisions

1. All four applications for an award of costs are refused.

## **Preliminary Matters**

2. For clarity, I shall refer throughout the decision to Mr Richard Reynolds (Rookery Farmers Limited) as 'the appellant' and to North Northamptonshire Council as 'the Council', irrespective of which party is the applicant and respondent in each costs claim.
3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.
4. Local planning authorities risk an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.
5. Appellants are at risk of an award of costs if they introduce fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, or where the appeal follows a similar appeal decision on the same site where development was found to be unacceptable and the circumstances have not materially changed in the intervening period.
6. The PPG further makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

## **Reasons**

Appeal A Ref: APP/M2840/W/22/3297806

*Costs Application 1 by Mr Richard Reynolds against the Council*

7. The appellant's claim is that the appeal has been borne out of a pattern of inconsistent advice and/or lack of communication by Council officers across several applications. The appellant further criticises the Council's insistence on the production of a viability report and subsequent failure to consider it, and the Council's failure to properly consider the fall-back position available to the appellant. The appellant contends that the Council's reasons for refusal are unclear and lack any clarification or explanation
8. The Council responds that the viability work related to a previous application, was re-submitted with the current proposal and the application was determined on the evidence available. It adds that the fall-back position was considered in the officer's report, including reference to the previous Inspector's conclusions as to the weight to be afforded it as a material consideration. The Council further states that matters relating to previous applications, pre-planning advice and meetings are not relevant to the appeal or costs applications.
9. The applicant's claims refer in large part to the Council's actions during earlier planning applications, or periods between applications. The evidence before me indicates that dialogue did take place between the appellant and the Council during the application process for an earlier proposal<sup>1</sup>, with additional time given by the Council for the appellant to supplement their case. My reading of

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<sup>1</sup> Council Ref WP/20/00654/FUL

correspondence suggests the Council did not insist upon a viability statement, but rather offered general advice that this would be the type of evidence that might better serve the appellant's case, rather than assertions made by email.

10. This aside, the Council clearly had regard to the appellant's viability evidence in its officer report, and in its appeal statement. Additionally, the Council makes explicit reference in its submissions to the potential fall-back position and its weight as a material consideration, including regard to case law referred to by the appellant. In my appeal decision I have agreed with the Council's position in both of these matters. Therefore, the Council has substantiated its position at appeal, and I make no finding of unreasonable behaviour in this respect.
11. I have otherwise little substantive evidence of unreasonable behaviour by the Council at the application or appeal stages in terms of communication or lack thereof. The application was determined within the statutory period and whilst I am aware of a complaint by the appellant to the Council about its handling of matters, that is ultimately a matter for local government accountability.
12. For these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in respect of this application.

#### *Costs Application 2 by the Council against Mr Richard Reynolds*

13. The Council claims that the appellant has acted unreasonably in repeating arguments already been considered at appeal<sup>2</sup>; and that no local or national policy supports housing in the open countryside as a means to provide funds for a rural business. It adds that the appellant has sought to link the proposal to another appeal with no mechanism for ensuring funds would be used as specified to construct the other development. The Council states that the appellant's application for an award of costs (Application 1) is unreasonable and has led to wasted time for the Council in defending its position.
14. The appellant indicates that the previous Inspector did not have viability evidence before him, nor was there a Class Q scheme existing as a fall-back, both of which represent new material planning considerations. In terms of policy, the appellant argues that the site is not isolated and the appeal stemmed from information sought by the Head of Planning but not acted upon. The appellant further criticises the Council for not raising any concerns with the lack of a mechanism to link the two proposals.
15. I recognise that the arguments before me are similar to those put to the previous Inspector, but I agree with the appellant that the viability evidence and existence of a confirmed fall-back position represent different material considerations to those before the Inspector in 2019. As such, I find no unreasonable behaviour by the appellant in this respect.
16. In terms of pursuing a scheme contrary to development plan policy, it was ultimately for the appellant to make a case for the proposal either complying with said policy or there being material considerations to outweigh it. It is evident the appellant pursued the latter approach. Ultimately, this comes down to planning judgement, but I find no unreasonable behaviour in the appellant pursuing their case on this basis.

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<sup>2</sup> Appeal Ref: APP/H2835/W/18/3204444

17. The absence of a mechanism to link the appeals, as set out in my decision, was not conducive to the appellant's case. I do not find fault in the Council's failure to attempt to secure a planning obligation if no indication was made that one was forthcoming. Ultimately, it was to the appellant's own detriment that this was not considered as part of their application, but I do not regard the absence of a planning obligation in this case as unreasonable behaviour.
18. For these reasons, I conclude that the appellant has not exhibited unreasonable behaviour and the Council has not been put to unnecessary or wasted expense at the appeal stage. No award of costs is therefore justified.

Appeal B Ref: APP/M2840/W/22/3297826

*Costs Application 3 by Mr Richard Reynolds against the Council*

19. The appellant cites procedural missteps by the Council in processing the application, including changing the description to include unnecessary reference to the creation of an access, and changing the address leading to confusion as to the actual location of the proposal. Further concerns are raised at the lack of communication by officers during the application, in particular in respect of missing information; that the reasons for refusal were unclear and were contradicted by a subsequent email from the Council indicating that the proposal would be supported. This has led to unnecessary delays in submitting the appeal and adverse effects on the appellant's business.
20. The Council responds that it is the appellant's responsibility to provide all relevant information, and that it provided feedback to the appellant in a meeting in March 2022 and later by email. It adds that the appellant had planning permission in place from 2018 to 2021 but failed to implement it. The Council maintains that a 'Proposed Block Plan' drawing was not submitted by the appellant, and therefore it had no basis to determine the impacts of the proposal. It adds that concerns were clearly expressed by consultees in respect of protected species and highway safety.
21. Although I have considered the matters relating to the Council's publicity of the application, including the placement of site notices, these are for the Council to address. There is no substantive evidence to suggest any parties were misled or prejudiced by the change in description or site address. In any event, it was open to me to consider the appeal on the basis of the original description.
22. The red line of the site shows an access route from the road to the proposed store. Whilst an access was previously granted permission, I saw on site that this amounted to a gate and a rough, unmade track. On the evidence put to me, the proposed access was likely to be more substantial in form, and so it was not unreasonable of the Council to consider the implications of the access.
23. I determined at the hearing that the missing 'Proposed Block Plan' drawing could be taken into consideration. There is evidence of errors by both parties in respect of this drawing, firstly in the appellant failing to submit it, but also in the Council failing to notice it listed on the application form but not being present. Both parties could, and perhaps should, have been more alert to the omission of the plan, but given there were other reasons for refusal unrelated to this plan, it is likely that the Council would have refused permission even if the plan had been submitted.

24. At the hearing, the parties were able to discuss the drawing without the need for adjournment or taking up excessive hearing time. Consequently, whilst the inaction of both parties was unfortunate, the subsequent submission of the drawing allowed the hearing to progress as planned. In this respect, I find no unreasonable behaviour by the Council.
25. In other respects, I have limited evidence as to the alleged lack of response from the Council during the application, as copies of correspondence before me related mainly to discussions either before or after the relevant application. The Council's reasons for refusal were clear and refer to relevant development plan policies, and whilst I have not agreed with the Council on three of the four reasons, it nevertheless advanced evidence in support of its position. I afford greater weight to this than to informal comments made by officers outside of the application process.
26. Overall, the evidence before me does not indicate unreasonable behaviour by the Council which has led to unnecessary or wasted expense at the appeal stage. No award of costs is therefore justified in respect of Application 3.

*Costs Application 4 by the Council against Mr Richard Reynolds*

27. The Council states that the 'Proposed Block Plan' was not submitted through the Planning Portal at the outset of the application; is not on the Council's website and was not listed as a refused drawing on the decision notice or seen by consultees. The Council contends that the appellant introduced new evidence not forming part of the application and upon which the public did not have the chance to comment. This was an attempt to evolve the scheme, contrary to the Procedural Guide Planning Appeals – England (February 2022). The appellant has acted unreasonably in attempting to provide this plan at appeal stage, and in claiming the reasons for refusal are not clear.
28. As set out above, and in my main decision, I determined that the drawing in question did not amount to an attempt by the appellant to evolve the scheme, but to rectify an omission from the original application. Without the drawing, the appellant would effectively have been unable to address a number of the Council's reasons for refusal. The detail of the drawing was not complex and the Council was able to comment on it as necessary during the hearing, without the need for adjournment or delay.
29. For these reasons, I do not consider that the applicant's actions in submitting this drawing at the appeal stage amount to unreasonable behaviour leading to unnecessary or wasted expense for the Council at the appeal stage. Therefore, no award of costs is made in respect of Application 4.

**Conclusion**

30. For the reasons given, I conclude that an award of costs is not justified in respect of any of the applications, and all are therefore refused.

*K Savage*

INSPECTOR