



Costs Decision

Hearing held on 26 April 2022

Hearing adjourned on 26 April 2022

Site visit made on 26 April 2022

Hearing closed on 6 June 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 November 2022

**Costs application in relation to Appeal Ref: APP/E2001/W/21/3280919
Main Street, Everingham, East Riding of Yorkshire YO42 4JA
Easting: 480421 Northing: 442382**

- 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 Mark Fisher for a full award of costs in relation to substantive and procedural matters and for an additional partial award of costs in relation to a procedural matter against East Riding of Yorkshire Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for external and internal alterations to barn to allow use as dwelling.
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Decision

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

The Submissions for Mr Mark Fisher

2. An application for a full award of costs was made by Mr Mark Fisher (the Applicant) in writing prior to the Hearing¹. At the Hearing the Applicant confirmed orally that they intended to submit an additional application for a partial award of costs during the adjournment. Following which an updated application for costs and a response to the Council's Costs Rebuttal were made in writing².
3. In the application for a full award of costs, the Applicant submits that the Council behaved unreasonably on both substantive and procedural grounds, which has caused them to incur unnecessary expense in the appeal process.
4. In relation to substantive matters, the Applicant asserts that there are no supportable reasons or sufficient evidence to justify the refusal of the application and that the Appeal should never have been necessary. These matters include, not applying the relevant planning policy correctly; not following well-established case law; not determining similar cases in a consistent manner; relying on vague assertions about the proposal's impact which are not supported by objective analysis; and refusing the application in

¹ Received 21 April 2022.

² Received 28 April 2022.

part on the grounds of its effects on trees within the appeal site when this matter could have been dealt with by condition.

5. In relation to procedural matters, the Applicant asserts that the Council behaved unreasonably in how it dealt with the application. Namely, the inconsistency of the decision with pre-application advice; the protracted assessment and determination of the proposal; and the failure to co-operate with the Applicant to find a solution which was acceptable to both parties.
6. In the additional application for a partial award of costs, the Applicant submits that the Council has behaved unreasonably on procedural grounds in failing to notify Historic England, as required under Regulation 5A(3) of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended) (the Regulations). As a consequence, the notification had to be carried out as part of the Hearing process, which has led them to incur unnecessary expense.

The Response by East Riding of Yorkshire Council

7. A rebuttal to the Applicant's application for a full award of costs was made by the Council prior to the Hearing³. Additional comments on the Applicant's additional application for a partial award of costs were made orally by the Council at the Hearing.
8. In relation to the application for a full award of costs and the substantive matters raised by the Applicant, the Council submits that the reasons for refusal are justified and supported by evidence. Specifically, that the relevant policy has been applied correctly; that the case law cited by the Applicant is not directly relevant; that it has been consistent in its approach in determining similar cases; that its feedback regarding the proposal's impact has been clear and unambiguous; and that the assessment of the effects of the proposal on trees within the site is a reasonable one.
9. In relation to the application for a full award of costs and the procedural matters raised by the Applicant, the Council considers that it has behaved reasonably. Namely, that it has been consistent in its approach to assessing the proposal prior to and following the submission of the application; that extensions of time were agreed with the Applicant; and that it provided clear and concise written and verbal advice throughout the process, but ultimately a solution which was agreeable to both parties could not be reached.
10. In responding orally at the Hearing to the Applicant's additional application for a partial award of costs, the Council advised that it was aware of the requirement to notify Historic England, but that its failure to do so was an administerial/validation oversight.

Reasons

11. The Planning Practice Guidance (the 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 process⁴. The matters can either be substantive, relating to the planning

³ Received 25 April 2022.

⁴ National Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306.

merits of the appeal or procedural, relating to the appeal process⁵. The Guidance confirms that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, 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 awarded⁶.

Main application for a full award of costs

Substantive

12. As can be seen from my Decision, I conclude that the proposal complies with the development plan when taken as a whole. However, while I have ultimately reached the same conclusion as the Applicant, I consider that the assessment and determination of the proposal against the relevant policy is not a simple process and requires the application of planning judgement.
13. It is essential that in assessing and determining development proposals, the relevant local and national planning policy are applied correctly. In this instance, the Council assessed the proposal against the relevant policy at a local and national level, namely Policy S4 of the East Riding Local Plan 2012–2029, Strategy Document, April 2016 (the ERLP) and Paragraph 80 of the National Planning Policy Framework (the Framework), both of which relate to the conversion of existing disused buildings within the countryside.
14. The principle of preserving and converting existing disused buildings in the countryside to residential use is supported under these provisions. However, both are subject to specific criteria, including that the development would 'enhance the immediate setting'. As no definition of the terms 'enhance' and/or 'immediate setting' are provided in the ERLP or the Framework, it is inevitable that a degree of planning judgement is required in assessing whether a proposal would be policy compliant.
15. I note the Applicant's assertions concerning, what they consider to be, the Council's mistaken focus on the perceived effects of the building's change of use from agricultural to residential. However, to my mind, in considering whether the conversion of the building for new housing would meet the specific provisions of Policy S4 and Paragraph 80, it is reasonable for any assessment to evaluate the potential implications of the change of use.
16. In the above respects, I consider that the defence of planning judgement is available to the Council in this instance, and that the Council's application of Policy S4 and Paragraph 80 was not so fundamentally incorrect that it represents unreasonable behaviour.
17. In any event, even if the Council had applied Policy S4 and Paragraph 80 in line with the Applicant's submission and concluded that the proposal was policy compliant, given the sensitivity of the site and the other reasons for refusal concerning the proposal's effects on designated heritage assets and trees, I cannot be certain that it would have altered the application being refused and therefore going to appeal, along with the incurrence of any associated expense.

⁵ National Planning Practice Guidance, Paragraph: 046 Reference ID: 16-046-20140306.

⁶ National Planning Practice Guidance, Paragraph: 033 Reference ID: 16-033-20140306.

18. In relation to the decision of the Court of Appeal in the case of Tate⁷ referred to by the Applicant, I am not convinced that the Council did not satisfactorily consider the position or circumstances 'on the ground' in its assessment and determination of the application. A general appraisal of the site and its context are included within the officer report, which sets out what the Council considers to be the intrinsic character of the site and its surroundings, permitting a planning judgement to be made in relation to the proposal's effects. That the conclusions of the assessment are different to the Applicant's or indeed those in my Decision, does not represent unreasonable behaviour by the Council.
19. From the limited submitted evidence and the discussion at the Hearing it is evident that, although similar in some respects, the details and circumstances of the 'similar cases' cited by the Applicant⁸ are not directly comparable to the proposal before me. The differences include location in relation to the defined settlement and other residential properties; the merit of the building to be converted and the form of the development. As such, the Council did not act unreasonably in this regard.
20. The officer reports and the consultee comments are clear in what the Council considers would be the effects of the proposal. Moreover, the reasons as to why the Council refused the application are clearly set out in the decision notice. On this basis, I am not convinced that the Council's assertions about the proposal's impact were so vague or without foundation as to represent unreasonable behaviour.
21. It is common ground between the parties that the mature trees within the site make a positive contribution to the character and appearance of the site and the surrounding area. Given this and the objections to the proposal raised by the Trees and Landscape Team, I consider that it was reasonable of the Council to take a precautionary approach and not leave this issue to be dealt with by condition.

Procedural

22. There is a slight disparity between the wording of the pre-application advice and the wording of the decision notice relating to the acceptability of the proposal in principle. Nonetheless, overall, it appears that the advice regarding the Council's main concerns in relation to the proposal, and the subsequent reasons for refusal, remained consistent throughout the process. In this respect, the Council did not act unreasonably.
23. I am aware of the site's long planning history and the lengthy negotiations between the parties regarding the scheme, which date back to 2017/2018. I also note the extended period that it took the Council to determine the application which is the subject of the appeal⁹. Nevertheless, it is a sensitive site with many issues which require consideration. The submitted evidence illustrates that the Council responded to the requests for pre-application advice, as well as assessing and determining the submitted applications, each

⁷ *R(Tate) v Northumberland CC* [2018] EWCA Civ 1519 which agreed with *Wood v Secretary of State for Communities and Local Government* [2015] EWCA Civ 195.

⁸ Application Ref: 15/01748/PLF - Land and Building South of Home Farm Cottage, Thorpe Le Street Road; Application Ref: 14/03431/PLF - Everingham Farms, Carr Lane; and Application Ref: 04/06575/PLF - Southfield Farm, Carr Lane.

⁹ Application dated 02 July 2019. Decision Notice dated 15 February 2021.

time considering and providing feedback on the revised schemes. As such, the Council acted reasonably in this respect.

24. In relation to the application which is the subject of the appeal, I am mindful that the scheme was revised during its determination in an attempt to address the Council's concerns and that this period was at the height of the Covid-19 pandemic when public sector services were under pressure. Moreover, I note that the Council state that extensions of time were agreed, which is not disputed by the Applicant. On this basis, there is no robust evidence that the Council acted unreasonably.
25. No compelling evidence has been presented which indicates that the Council failed to co-operate with the Applicant or that it did not take a proactive approach in its assessment and determination of the proposal. The officer report and consultee comments are detailed and consistent in their explanation as to why the scheme was considered to be unacceptable, which were communicated to the Applicant. Ultimately, it appears that while the parties have tried to achieve a resolution to the concerns raised, this has not been possible and a difference of opinion as to the perceived effects of the scheme remains.

Additional application for a partial award of costs

Procedural

26. Regulation 5A(3) of the Regulations is clear in stating that Historic England must be notified on development which the local authority think would affect the setting of a Grade I or Grade II* listed building. On this basis, it would be reasonable to conclude that this procedure would involve an initial assessment of the proposal and would not solely be an administrative process when validating the application. Moreover, bearing in mind the length of time it took to determine the application and that the proposal was revised during that period, there was sufficient opportunity for this process to have been carried out prior to the Council's final decision.
27. Given the Council's second reason for refusal, Historic England should have been notified of the proposal and given the opportunity to comment. The Council's failure to do this as part of the determination of the application directly led to an adjournment of the Hearing to allow this process to be carried out by the Planning Inspectorate. On this basis, I consider that the Council failed to meet its procedural obligations and, as such, behaved unreasonably.
28. For a costs application to be successful, the identified unreasonable behaviour also has to result in unnecessary or wasted expense in the appeal process. As a consequence of the Council's failure to notify Historic England, the Applicant's team was required to remain involved in the appeal process, appraising the information sent by the Planning Inspectorate to Historic England and commenting on Historic England's response to the notification. Whilst this was achieved via fairly short email correspondence, it still amounts to unnecessary expense in the appeal process.

Conclusion

29. In relation to the main application for a full award of costs, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

30. Conversely, in relation to the additional application for a partial award of costs, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

31. 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 East Riding of Yorkshire Council shall pay to Mr Mark Fisher, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in appraising the information sent by the Planning Inspectorate to Historic England as part of the notification and commenting on Historic England's response to the notification; such costs to be assessed in the Senior Courts Costs Office if not agreed.
32. The Applicant is now invited to submit to East Riding of Yorkshire 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.

F Cullen

INSPECTOR