



Costs Decision

Site visit made on 8 November 2022

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Costs application in relation to Appeal Ref: APP/C1570/W/22/3290693 Barn North Of Leaden Hall Barns, Stortford Road, Leaden Roding, 558992, 213431

- 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 Strutt and Parker (Farms) Ltd for an award of costs against Uttlesford District Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for change of use of agricultural building to 2 no. dwellings.
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Decision

1. The application for costs is allowed in part, in accordance with the terms set out below.

Case for Strutt and Parker (Farms) Ltd

2. The applicants contend that the Council acted unreasonably in introducing further reasons for refusal different to those cited in relation to an earlier refusal of prior approval for a similar development on the same site.
3. The applicant further claims that the Council acted unreasonably in finding that the proposed development would result in significant noise disturbance to neighbours, given that the statutory consultee raised no objection on this point. The Council's reason for refusal is considered to be a vague and generalised assertion not supported by any objective analysis. Similarly, the refusal also raises matters relating to contaminated land, which were deemed capable of being addressed by condition in relation to the first application.
4. The applicant states that they have incurred costs in having to appeal the second decision, having considered that they had addressed the reasons for refusal for the first application. In addition, they have incurred additional costs in the preparation of a noise survey.

Case for the Council

5. The Council contends that the application was refused based on concerns over the level of demolition proposed. Concerns over the level of noise arose from neighbour objections to the proposal. Regarding the matter of contaminated land, the Council states that it was unable to place the recommended contamination condition, and that this would be better placed to deal with outside the Prior Notification process.

Reasons

6. National Planning Practice Guidance (the NPPG) on planning appeals and the award of costs advises that costs may be awarded where a party has behaved

- unreasonably, and that behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
7. It is not clear from the evidence before me whether residents raised concerns regarding noise in relation to the first application on this site. However, the Council found no harm in relation to noise impacts of the development in determining that application. In determining such harm would exist despite their statutory consultee's response, the Council determined the second application differently to the first. Resident concerns and objections can certainly justify a different decision on similar applications. However, the Council failed to provide any professional technical evidence to support their contention that unacceptable noise would result from the development, either at application or appeal stage. In failing to do so, the Council has failed to support their claim with any objective analysis, so acted unreasonably. The appellants have incurred additional costs in producing a noise report that the Council has chosen not to respond to.
 8. Matters relating to contamination risks on the site can be addressed through the Prior Notification process. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows for this to be considered as part of the application process, and appropriately worded conditions can be applied where required. It is not clear from the Council's submissions why it included this as one of its reasons for refusal when it did not do so in relation to the first application. I can only therefore conclude the Council acted unreasonably with regards to this issue.
 9. The Council refused permission partly based on the extent of demolition proposed, which from the evidence before me differed from that proposed in the first application. Regardless of my decision on the appeal, this was a matter of planning judgment and the Council would have refused permission even without addressing the matters of noise and contamination. I do not therefore consider that the applicant could have avoided all costs associated with the appeal. In addition, while the Council acted unreasonably in including the matter of contamination which was not raised in relation to the first appeal, it does not appear that this caused the applicant to incur any additional costs. However, I do find that the Council's behaviour in relation to noise resulted in additional costs to the applicant from the production of the noise survey and responding to this reason for refusal.

Costs Order

10. 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 Uttlesford District Council shall pay to Strutt and Parker (Farms) Ltd the costs of the appeal proceeding incurred in responding to the noise issue.
11. The applicants are 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. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Chalk

INSPECTOR