

Costs & Decisions Team

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Date: 15 March 2023

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 322
LAND AT HUNDREDSTEDDLE FARM, HUNDREDSTEDDLE LANE, BIRDHAM,
CHICHESTER PO20 7BL
APPEAL BY SOMERLEY AGRICULTURAL CONTRACTORS: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to refer to the application for costs made on behalf of Somerley Agricultural Contractors. The appeal resulted from the refusal of Chichester District Council to grant prior approval for agricultural development¹. The Council's refusal, dated 7 October 2020, related to land described above, the proposal being for:

"Grain store and machinery store"

2. This letter deals with the appellant's application for a full award of costs against the Council as made in written correspondence from their agents received on 24 January 2022 and on 31 August 2022. The Council replied on 16 August 2022. As the representations have been made available to the parties it is not proposed to summarise them. They have been carefully considered.

Summary of the decision

3. The costs application fails. The formal decision is set out in paragraph 19 below.

Basis for determining the costs application

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal. Costs are awarded only on the grounds of unreasonable behaviour resulting in unnecessary or wasted expense.

¹ Application for prior notification of agricultural or forestry development - proposed building, Town and Country Planning (General Permitted Development)(England) Order 2015, Schedule 2, Part 6

5. The application for costs has been considered in the light of the Government's Planning Practice Guidance (PPG) on costs, the appeal papers, the parties' costs correspondence and all the relevant circumstances.

Background

6. The application was refused by the Council on 7 October 2020 for three reasons. Reasons 1 and 2 stated that the proposal would not benefit from the permission granted by Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GDPO). Reason 3 stated that the proposal was likely to cause danger to users of the highway, due to the siting of the proposed building. No objection was raised to the proposed design or external appearance.
7. An appeal against this refusal was allowed by a decision dated 25 May 2021. There was a related application for costs, which was allowed in part (in relation to Reasons 1 and 2) by a decision also dated 25 May 2021. Relying on case law that had been referred to by the parties, the Inspector found that it was not reasonable for the Council to have considered whether the proposal constituted permitted development within the terms of the GDPO. In respect of Reason 3, the Inspector concluded:

"Although I have allowed the appeal, the accompanying decision explains why I have found that there is scope for exercising planning judgement in respect of how the matter of highway safety may affect the determination of the siting of the proposed building, and that, having regard to the particular circumstances of the appeal scheme, the Council did not act unreasonably in taking this factor into account in the determination of the siting of the building."

8. The Council mounted a legal challenge against both the appeal decision and the costs decision. This challenge was successful and both decisions were quashed by a Court Order dated 2 August 2021. The Court found that the Inspector had not had regard to further case law which held that:

"...when determining an application for prior approval for development under Part 6, Class A of the GPDO the decision maker is entitled to consider whether the development proposed falls within the scope of the class of permitted development relied upon. This error was material to the Inspector's decisions to allow the Appeal and to make the Costs Award and the Defendants accept that both should be quashed."

9. The appeal and costs applications were remitted for redetermination. The appeal was reconsidered by another Inspector, who allowed the appeal by a decision dated 28 January 2022. Shortly before that appeal decision was issued, the Council gave prior approval for a grain store and machinery store on the same site following a further application². That decision is dated 20 January 2022.
10. The original costs application was withdrawn. A further costs application was then made, which is the subject of this letter.

Reasons for decision

11. The appellant seeks a full award on both substantive and procedural grounds. The appellant draws attention to the PPG, which states that a local planning authority may be at risk of a substantive award if it grants permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way³.

² EWB/21/03667/PNO

³ PPG Reference ID: 16-049-20140306

12. The Secretary of State notes that the first Inspector found that there was scope for planning judgement in relation to the effect of the proposed siting on highway safety. Although they found in favour of the appellant on the planning merits, they did not consider that the Council's position was unreasonable. That decision was quashed by a Court Order. Nevertheless, the legal challenge was unconnected to Reason 3 and the Secretary of State considers that the first Inspector's findings on this point are a material consideration.
13. In the redetermination appeal, the second Inspector found that the effect of the proposed siting on highway safety was one of the main issues to be considered. The issue was explored in some detail in the decision letter, with the Inspector noting that:

"The primary issue is that because of the geometry of the junction, large vehicles turning north when exiting Tile Barn Lane would be compelled to cross the double white centre line of the B2198."

and

"That said, the need to turn a large vehicle out onto Bracklesham Lane is not ideal given the potential for conflict with approaching traffic."
14. Although the Inspector found in favour of the appellant, for reasons set out in his decision, the Secretary of State considers that this was not a straightforward matter and required a careful weighing of the evidence. This indicates that the Council's initial position was not unreasonable.
15. The Council later came to a different view in relation to a further application for prior approval. However, matters had moved on by then, not least with the first determination and subsequent legal challenge. As noted above, the findings of the first Inspector in relation to Reason 3 were unrelated to the legal challenge. The Council was entitled to have regard to those findings as part of its overall assessment of the further application. It was not unreasonable for the Council to reconsider its previous position.
16. The appellant argues that the scheme drawings ultimately approved were the same as those initially refused. This is not disputed by the Council. However, the Council's submission that the supporting information and evidence base was materially different was not countered by the appellant. The Secretary of State considers that, in determining the reasonableness of the Council's approach, it is necessary to consider all the planning circumstances, not just the submitted drawings. Overall, the Secretary of State finds that the conditions for a substantive award have not been met.
17. Costs may also be awarded where a local planning authority behaves unreasonably in relation to procedural matters⁴. The appellant argues that the Council prolonged the appeal process by mounting a legal challenge. However, the Council was concerned to ensure that the appeal was decided on the correct legal basis. It was not unreasonable for it to commence proceedings in order to ensure that happened. The outcome of the challenge established that the Council was entitled to consider whether the proposal was permitted development when it determined the appeal application. Although the Council ultimately granted approval, following a further application, that happened towards the end of the appeal process, shortly before the Inspector's decision on the redetermined appeal.
18. The Secretary of State concludes that, having regard to all the circumstances, the Council did not behave unreasonably in relation to either the substance of the appeal or procedural matters. The conditions for an award of costs have not been met. Given that

⁴ PPG Reference ID: 16-047-20140306

finding, it is not necessary to comment further on the costs which the appellant says were incurred unnecessarily.

FORMAL DECISION

19. For these reasons, it is concluded that an award of costs against the Council is not justified in the particular circumstances of this case.

Yours faithfully

David Prentis

DAVID PRENTIS
Authorised by the Secretary of State
to sign in that behalf