



Costs Decision

Site visit made on 9 June 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Costs application in relation to Appeal Ref: APP/U2615/W/22/3309355 Barn south of Green Lane, Filby NR29 3HX

- 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 and Mrs Green for a full award of costs against Great Yarmouth Borough Council.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), for the prior approval - change of use of agricultural barn to 1 no. dwelling.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. The applicants contend that the appeal was unnecessary for both procedural and substantive reasons. This was because the application was determined against the development plan rather than the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), and there was a lack of positive and proactive engagement with the applicant and statutory consultees. This included no re-consultation on new evidence, and a refusal to agree an extension of time with concerns raised too late in the determination process. These aspects lead to the reasons for refusal being indefensible.
4. The Council's officer report directly specified that the development plan policies do not apply. The clear analysis within it of the parameters of the GPDO Class Q indicate that the correct procedure was followed in the assessment. Although a development plan policy was specified within the reasons for refusal, as outlined in my Appeal Decision I also found this to be a relevant material consideration. The reasons sufficiently outline and explain the harm which the Council suggests would be caused, with the policy being used as evidence to support the planning judgment made, rather than being the basis of that judgement. No procedural mistake is therefore evident to me.
5. I have seen various iterations of the Proposed Site Plan & Location Plan, originally HOL-F-N-SL01 ('the original plan'), with revision E being the basis of the appeal proposal ('the revised plan'). The Council has no statutory duty to formally accept revised plans to the extent that re-consultation should

automatically occur. This is reinforced by the PPG which states that it is at the discretion of the Local Planning Authority (LPA) whether to accept such changes, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.¹

6. The applicants suggest there is a common law duty to re-consult where not doing so would be unfair. However, the LPA is the decision making body, with the Local Highway Authority (LHA) being only a consultee. Having received the LHA's informal advice via the applicants that the revised plan was acceptable, the Council's decision was still to refuse the application. It was therefore unnecessary to undertake formal re-consultation, when the Council already considered that the issues it had identified with the revised plan would not have been overcome by any of those consultation responses.
7. I do have sympathy with the applicants' frustrations over the Council's limited communication, and the lack of early identification of issues, particularly including giving only the same day notice that the application would be refused. However, again, there is no legislative duty requiring the Council to enter into discussions with applicants to resolve problems. The National Planning Policy Framework ('the Framework') (2021) requirement under paragraph 38 to work proactively with applicants does not oblige the Council to engage in discussions in all circumstances. I find similar in relation to the Great Yarmouth Borough Council Constitution cited by the applicants.
8. Specifically with relation to the revised plan I find that the Council satisfactorily took account of it, including holding an internal meeting where it was discussed, colleagues further discussing it following emails with the applicant, and subsequently advising the applicant that the plan would not overcome the decision to refuse the application. The Council then gave the applicants the opportunity to withdraw the application to avoid the refusal. Considering the Council's opinion that the changes proposed were so major that the prior approval route would no longer be suitable, it is understandable that it did not deem any further negotiation or changes to be appropriate.
9. Finally, while paragraph 12.3 of the 'Procedural Guide: Planning Appeals – England' (2023) identifies that the Council should not normally raise new issues at appeal stage, that it did so was as a direct result of the applicants' submission of a revised plan as the basis of the appeal proposal. The issue of lack of outlook if the lean-to remained in its current position, and the revised red line effect on the curtilage size, were therefore appropriate matters for the Council to have raised in its appeal evidence.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L Hughes

INSPECTOR

¹ Paragraph: 061 Reference ID: 14-061-20140306, Revision date: 06 03 2014