



Costs Decision

Site visit made on 20 June 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/22/3311577 Barn at 16 Broad Town Road, Broad Town, Swindon SN4 7RB

- 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 Ms Fiona Bendall for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for Conversion of Existing Building to Create 1no. New Dwelling.
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraphs 047 and 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities.
3. I have ultimately found in favour of the applicant in regard to whether sufficient evidence had been provided to demonstrate that the building was solely in agricultural use as part of an established agricultural unit. However, as such a judgement is made on the balance of probability, it was not unreasonable for the Council to determine that they were still in doubt about the use of the building. They were able to provide evidence to substantiate the first refusal reason. Therefore, it was not unreasonable for the Council to come to a different conclusion on this matter.
4. Regarding whether the location or siting of the building makes it otherwise impractical or undesirable, I note that the appeal prior approval was a resubmission, after the refusal of an earlier first prior approval¹ on similar grounds. However, under the earlier prior approval, the Highways Department commented that 'even though a minimum visibility standard cannot satisfy MfS standards the fact is this is an existing access and prior to the formation of a dwelling house at the proposal site there is evidence of farming activity. This agricultural use will have produced a number of vehicle movements to and from the public highway which will have been excess to the movements associated with the production of one bed dwelling with requirement for a single car'. Consequently, there was no highway objection to the earlier prior approval, in regard to using the existing access to the highway.

¹ PL/2022/03146

5. However, under the appeal prior approval, the Highways Department commented that 'to add a further third dwelling to a shared access that is already considered to be unfit for suitable visibility would be a detriment to highway safety. Minimum visibility standard cannot satisfy MfS standards, and the fact is this development will result in an increase in movements via an access that is unsuitable in highway safety terms will result in a detrimental effect on safety. The access will be considered unsuitable in highway safety terms to serve as a shared access for three dwellings'.
6. There was no change in the access arrangements associated with the proposal between the earlier prior approval and the appeal prior approval. The Council have failed to demonstrate why they did not determine the 2 cases, which were very similar, in a consistent manner. The Council have failed to explain the change in the Highway comments. The refusal of planning permission on this matter therefore constitutes unreasonable behaviour. In these circumstances, unnecessary extra costs were incurred by the applicant and an award against the Council in respect to the second reason for refusal is justified.

Conclusion

7. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the first reason for refusal. However, a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, is warranted.

Costs Order

8. 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 Wiltshire Council shall pay to Fiona Bendall the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal.
9. The applicant is 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. In the event that 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.

Laura Cuthbert

INSPECTOR