



Costs Decision

Site Visit made on 23 May 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5TH September 2023

Costs application in relation to Appeal Ref: APP/Z3825/W/22/3294122 Rye Farm, Hollands Lane, Henfield BN5 9QY

- 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 Andy Barrott for a full award of costs against Horsham District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 3 x new build dwellings; in the alternative to 4 dwelling prior approval conversion permissions granted under DC/20/0604 Ref DC/20/2266.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The applicant considers that the Council, by determining the application without fully considering the fallback position acted unreasonably by preventing or delaying development which should clearly have been permitted. In addition, the applicant submits that the Council failed to substantiate their reasoning and refused planning permission on a ground capable of being dealt with by condition.
3. The fallback scenario put forward within the applicant's appeal statement relates to the change of use of the existing agricultural building at the appeal site to 4 x 3 bed dwellings. This was consented by the Council under Schedule 2, Part 3, Class Q, of the Town and Country Planning (General Permitted Development) (England) Order 2016 (as amended)¹. For the reasons outlined within the appeal decision, it seems to me that the prior approval scheme is not proceedable. Nevertheless, the fallback scenario was a material consideration when the appeal planning application was determined by the Council.
4. The Council's evidence explains that the existing barn maintains a utilitarian appearance and forms part of the historic farmstead. In contrast, the Council considered that the appeal scheme would be more overtly domestic in its appearance and layout. For these reasons, Members took the view that the appeal proposal would have a greater impact on the character and appearance of the countryside and would harm the setting of the nearby listed building. Although I have come to a different conclusion on this matter, based on the evidence before me, I am not persuaded that the Council's reasoning was

¹ DC/20/0604

unsubstantiated, vague or indeed unsupported by objective analysis. Furthermore, the Council clearly considered the fallback position, including the reduced scale and thereafter plainly presented the reasons why the scheme differed. As such, I do not agree that the Council acted unreasonably in this regard.

5. In addition, the applicant submits that a condition requiring a flood evacuation plan to be submitted would have made the development acceptable. Indeed, it is noted that condition 11 of the officer's report recommends that such a condition be imposed on any planning permission granted.
6. Where a development would be in an area at risk of flooding, the National Planning Policy Framework and PPG set out that the development should only be allowed where it can be demonstrated that a safe access and escape route is included. Notwithstanding the reduced housing density, to be certain that a safe access and escape route would be available, the Council's rebuttal to the application indicates that Members considered that this information was required prior to determination. Although I acknowledge that this differed to the advice of officer's, it does not mean that Members failed to sufficiently consider the fallback or that their stance was unreasonable. Moreover, for the reasons set out in the appeal decision, I share the Council's concerns regarding the increased flood risk and do not consider that a planning condition would make the development acceptable.
7. In determining the planning application, Members were entitled to reach a different decision providing that this was informed by objective analysis. Based on the available evidence, I am satisfied that appropriate weight was given to the fallback scenario and that the Council's reasoning was neither vague nor unsubstantiated.

Conclusion

8. For the reasons outlined and having had regard to the case law referenced by the applicant, I find that unreasonable behaviour resulting in unnecessary or waste expense, as described in the PPG has not been demonstrated.

H Wilkinson

INSPECTOR