



## Costs Decision

Site visit made on 18 April 2023

**by A Berry MTCP (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 September 2023**

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### **Costs application in relation to Appeal Ref: APP/W3520/W/22/3299544 Barn at Green Farm, Ashbocking Green, Ashbocking, Ipswich IP6 4EQ**

- 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 S E Kent Partnership for a full award of costs against Mid Suffolk District Council.
- The appeal was against the refusal of the Council to grant planning permission for the "demolition of all buildings except timber frame barn; conversion, alteration, extensions and change of use to residential of timber frame barn and associated curtilage; erection of cartlodge; installation of package sewage treatment plant; means of access to B1078; and structural landscaping".

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### **Decision**

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

### **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 application relies on the fact that the Council's decision making has been inconsistent; they have misunderstood/misapplied development plan policies; failed to produce evidence to substantiate each reason for refusal; used vague, generalised assertions about the proposal's impact; failed to re-consult a consultee of additional information; and interpreted policy in a manner that has been rejected by Planning Inspectors.
4. Pre-application advice was obtained by the applicants prior to submitting the planning application to the Council. The pre-application advice indicated that the principle of the proposed development was supported by Policy H9 of the Mid Suffolk Local Plan, adopted 1998 ('the LP') which promotes the conversion and change of use of agricultural and other rural buildings to dwellings, subject to a number of criteria. The appellant, understandably, submitted the planning application on the basis of this advice.
5. While I appreciate that pre-application advice is given without prejudice, it clearly indicates that there would be no objection to the principle of a proposal to convert the existing building into a dwelling; a view that I shared in my consideration of the appeal. There is no evidence that the development plan and any relevant guidance has changed since the pre-application advice was given. Therefore, the Council's change in position without any reasonable justification, amounts to unreasonable behaviour. Furthermore, the applicant

has provided an example of a similar planning application<sup>1</sup> whereby the principle of the conversion of a barn into a dwelling was considered to comply, in principle, with LP Policy H9. Therefore, the Council has been inconsistent in its approach to determining planning applications for similar developments.

6. As a result of this unreasonable behaviour, the applicant has incurred unnecessary expense having to defend this matter at appeal.
7. The Council's pre-application response states that if development plan policies are considered out of date, that this will be discussed within the assessment of the principle of the proposal. The relevant section in the pre-application advice does not indicate that the relevant policies are inconsistent with the National Planning Policy Framework ('the Framework'). The applicant's Planning Statement, submitted to support the planning application, makes no reference to the relevant development plan policies being inconsistent or out-of-date. Furthermore, the Council's officer report and decision notice do not refer to the consistency or otherwise of the relevant development plan policies. The applicant only introduced evidence regarding the inconsistency of particular development plan policies to support their appeal.
8. In determining the appeal, I considered the applicant's evidence on this matter, however, for the reasons provided, I concluded that the policy was not inconsistent in respect of the proposed development. I also concluded that, even if I had applied the balancing exercise contained within paragraph 11(d), the proposal would not have overcome the adverse impacts I had identified. Therefore, it was not unreasonable for the Council not to have engaged paragraph 11(d) when determining the application, and even if they had, it is likely they still would have refused the application. Therefore, the applicant has not incurred any unnecessary or wasted expense in defending this matter at appeal.
9. Notwithstanding the Council's assessment of the proposal against LP Policy H9, the Council's officer report, in my opinion, is complete, precise, specific, relevant and provides sufficient evidence to support their case. It also clearly states which development plan policies the proposal would be contrary to. Furthermore, the Council were reasonable in raising concern regarding the impact of the proposed development on the existing farm, the scale and design of the proposed access road, the design of the proposed dwelling, its impact on the character and appearance of the surrounding area, and the living conditions of future occupiers, as following consideration of the appeal on its merits alone, I concurred with the Council on these matters.
10. I acknowledge that the Council failed to consider the existing building as a Non-Designated Heritage Asset (NDHA) within their assessment of the proposal, even though the applicant had been told that it comprised a NDHA in the Council's pre-application response and were advised to complete a Heritage Statement which was duly submitted with the planning application. Accordingly, the Council failed to assess the proposed development against the relevant paragraphs in the Framework. However, following consideration of the appeal building as a NDHA and applying paragraph 203 to the proposal, I found that the harm caused to the significance of the NDHA would not be outweighed by other material considerations. Therefore, the failure of the Council to

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<sup>1</sup> Planning Ref: DC/22/02414

consider this matter is unlikely to have overcome their concerns and therefore it would not have forgone the requirement for an appeal to be submitted.

11. The applicant considers the Council failed to take into consideration that the existing access is substandard and cannot be utilised by the proposed development as a material consideration for the proposed new access. However, following consideration of the appeal on its own merits alone, I concluded that insufficient evidence had been provided to substantiate that the existing access is substandard, or that a reduction in the Highway Authority's visibility splay requirements could not be achieved if further information had been supplied. Accordingly, the Council's concerns in respect of the necessity for the proposed access were not unfounded.
12. There is no requirement for the Landscape Architect Consultant (LAC) to be re-consulted on a planning application, even if additional information is subsequently provided by the applicant. Also, any advice provided would be just that, advice, which the Council is not obligated to follow. The Council's planning officer was entitled to reach their own conclusion on this matter, noting the initial concerns raised by the LAC. Additionally, as each planning application is considered on its own merits, had the LAC been re-consulted, it may still have resulted in an objection.

### **Conclusion**

13. For the reasons given above, unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial award of costs is therefore justified.

### **COSTS ORDER**

14. 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 Mid Suffolk District Council shall pay to S E Kent Partnership, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of defending the acceptability of the principle of development against LP Policies H7 and H9.
15. The applicant is now invited to submit to Mid Suffolk District 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, such costs shall be assessed in the Senior Courts Costs Office.

*A Berry*

INSPECTOR