



Costs Decision

Site visit made on 12 April 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Costs application in relation to Appeal A Ref: APP/K0235/W/22/3302658 Land to the rear of Brookfield, 105 High Street, Sharnbrook MK44 1PE

- 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 R Voller for a partial award of costs against Bedford Borough Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from an Agricultural building to a dwellinghouse(s) (Use Class C3) including associated building operations reasonably necessary to convert the building.
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Costs application in relation to Appeal B Ref: APP/K0235/W/21/3286097 Land to the rear of Brookfield, 105 High Street, Sharnbrook MK44 1PE

- 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 R Voller for a partial award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for Demolition of an agricultural building and erection of a new dwelling house and garage.
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Costs application in relation to Appeal C Ref: APP/K0235/W/22/3297359 Land to the rear of Brookfield, 105 High Street, Sharnbrook MK44 1PE

- 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 R Voller for a full award of costs against Bedford Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for Demolition of an agricultural building and erection of a new dwelling house.
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Decisions

1. The application for an award of costs for Appeal A is allowed in the terms set out below.
2. The application for an award of costs for Appeal B is refused.
3. The application for the award of costs for Appeal C is allowed in the terms set out below.

Reasons

4. 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.

5. Of particular relevance in considering these applications is the appeal decision issued on 21 May 2019, where an Inspector granted prior approval for the change of use of the agricultural building to three dwellinghouses (Class C3) and for associated operational development (the 'Previous Appeal')¹.

Appeal A

6. The Council's first reason for refusal relates to the structural stability of the existing building. However, the Council did not raise this issue in relation to the Previous Appeal. The Council has indicated that it only became aware of the Hibbitt Judgement after the Previous Appeal was allowed. For clarity, the Hibbitt Judgement was made in 2017, before the previous planning application was refused (in May 2018) and long before the appeal decision was issued in June 2019. As such, this does not provide sufficient rationale for an apparent change in the position of the Council, regardless of whether the Previous Appeal Decision was 'silent' on this matter.
7. Furthermore, it is incredibly difficult to understand why the Council considered that a structural survey was required in this case. There is no substantive evidence before me to indicate that the building is not structurally sound. A blanket approach requiring structural surveys for all Class Q development is not appropriate. Indeed, whilst the onus should be on the appellant to demonstrate that the requirements of the GPDO are met, where there are no particular reasons to doubt the structural stability of the existing building it is unreasonable to request a structural survey. The Council has therefore acted unreasonably and has also failed to justify or substantiate its reason for refusal.
8. The second reason for refusal relates to highway safety. This very same issue was addressed in the Previous Appeal, which involved an identical quantum of development on the same site. In the Previous Appeal decision the Inspector carefully considered the effect of the proposal on highway safety and concluded that, subject to a condition requiring a priority-system, the development would not have an adverse impact on highway safety. The Council has not afforded sufficient weight to the conclusions previously reached by the Inspector. In fact, it doesn't appear to have attributed any weight to those conclusions at all.
9. The Council's Officer Report states 'It should be highlighted here that the Inspector who determined the 2019 appeal is not a Highway Engineer.' This is not an appropriate rationale to apply and demonstrates a disregard for the conclusions reached by the previous Inspector. I therefore conclude that the Council has acted unreasonably in disregarding the conclusions of the Previous Inspector on highway safety. Indeed, the Government's Planning Practice Guidance provides specific examples of unreasonable behaviour, including: *'persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable'*.
10. The third reason for refusal relates to flood risk. However, the appellant does not assert any unreasonable behaviour in this regard. Albeit I note that the Council persisted with this reason for refusal despite the positive stance from the Environment Agency.

¹ PINS Ref: APP/K0235/W/18/3216729

11. The fourth reason for refusal relates to access for emergency vehicles. Again, the issue of whether a fire tender could access the appeal site was also considered by the Inspector in the Previous Appeal. He concluded that this issue could be addressed under Building Regulation requirements. In addition, the Inspector considering the appeal for the adjacent office development (which utilises the same access track) also reached the same conclusion.
12. The Council has referred to Local Plan Policy 31, which requires that 'planning applications should give particular attention to' the suitability of access arrangements to and within the development for service and emergency vehicles. This policy was adopted after the Previous Appeal decision. However, in considering applications for prior approval, there is no statutory requirement to consider the consistency with development plan policies. As such, this does not provide sufficient justification for deviating from the conclusions of the Previous Inspector. Again, the Council has acted unreasonably in this regard.
13. The fifth reason for refusal relates to the provision of access for the collection of waste. This too was addressed in the Previous Appeal Decision. However, it appears that the circumstances have changed since that appeal was determined and the appellant's evidence now indicates that private collection is the primary option for the removal of waste. In contrast, in allowing the Previous Appeal, the Inspector highlighted the prospect of the use of other land (adjacent to the highway) in the appellant's control. As such, whilst I have found in favour of the appellant on this issue, the Council was entitled to come to a different conclusion, and it did not act unreasonably in this regard.

Appeal B

14. The first reason for refusal relates to the principle of development. The appellant asserts that the Council acted unreasonably in not affording sufficient weight to the Previous Appeal (the Fallback). However, the Officer report does give consideration to the fallback. As alluded to by both the appellant and the Council, the judgment in *Mansell v Tonbridge & Malling Borough Council* [2017] EWCA Civ 131 confirms that the weight to be afforded to a fallback position is a matter of planning judgement. Whilst, in considering the appeal, I have found against the Council in relation to this issue, the Council did not act unreasonably because it provided a rationale and exercised a degree of planning judgment.
15. The second reason for refusal relates to character and appearance and the appellant does not allege unreasonable behaviour in this regard.
16. The third reason for refusal pertains to the provision of access for the collection of household waste. For the same reasons as given in relation to Appeal A, I conclude that the Council did not act unreasonably in relation to this main issue.
17. The fourth reason for refusal relates to access for emergency vehicles. Unlike Appeal A, the planning application was considered in accordance with the statutory test at Section 38(6) of the Planning and Compulsory Purchase Act 2004, whereby it must be determined in accordance with the development plan unless material considerations indicate otherwise. Given that Local Plan Policy 31 was adopted after the Previous Appeal, the Council did not act unreasonably on this main issue, regardless of the fact that I found no conflict between the proposal and this policy.

18. In terms of reason for refusal five, which relates to surface water drainage, I have found in favour of the Council and as such I do not consider that it acted unreasonably in this regard.
19. The sixth reason for refusal relates to flood risk and the lack of a Sequential Test. My appeal decision concludes that the appellant did not apply the Sequential Test. As such, I agree with the Council that there would be a conflict with the development plan and Framework in this regard. However, I have found that the fallback position is a material consideration which outweighs the conflict with the development plan. As already alluded to, the Council also gave consideration to the fallback position in refusing permission. As such, whilst I have afforded greater weight to the fallback, this is not a reason to conclude that the Council acted unreasonably.

Appeal C

20. The Planning Practice Guidance states in part that:

'If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.'

21. The planning application was submitted on 23 September 2021. Correspondence provided by the appellant indicates that an extension of time was agreed to allow the Council more time to determine the planning application. However, the application remained undetermined at the time the appeal was submitted on 21 April 2022.
22. The Council has not provided a reasonable justification for this delay. The fact that it would have refused the application for similar reasons to those associated with Appeal B is not a reasonable explanation. Indeed, the Appeal C planning application is materially different, as evidenced by the fact that I have allowed Appeal C and dismissed Appeal B.
23. The Council's more general assertion regarding 'staffing shortages' and Covid are not justification for the delay, particularly given the apparent lack of communication with the appellant from the point which an extension of time was granted.
24. The Council has therefore acted unreasonably on procedural grounds. This has resulted in wasted expense for the appellant. Indeed, had the application been refused in a timely manner, then the appeal might have been avoided. However, it should be noted that there is clearly some evidential overlap between the Appeal A and C proposals, and this should be taken into account when the parties seek to agree the sum of costs owed.

Costs Order

25. 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 Bedford Borough Council shall pay to Mr R Voller, the costs of the appeal proceedings as follows:

- Appeal A – Partial Award to include:

The costs associated with the appeal, including all reasons for refusal except No.3 and 5 as listed on the Council's decision notice.

- Appeal B – No costs awarded.
- Appeal C – Full award of costs:

All expenses incurred in appealing the non-determination of the planning application.

26. These costs will be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Bedford Borough 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.

Luke Simpson

INSPECTOR