



Costs Decision

Site visit made on 22 August 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2023

**Costs application in relation to Appeal Ref: APP/Y3940/W/22/3313169
Stobberts Agricultural Buildings, Stobberts Road, Market Lavington,
Devizes SN10 4AZ**

- 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 Stephen Wordley for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of an application for prior approval for the change of use of agricultural building to 1 No dwellinghouse (Class C3) and associated operational development.
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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. PPG includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
4. The applicant contends that the Council has behaved unreasonably because it failed to adequately consult with the Highway Officer, including by not providing a copy of the transport survey and report; by raising issues resolved through the previous appeal decision¹; and, failed to give sufficient weight to the fallback position. Additionally, the applicant contends the Council has behaved unreasonably because, whilst it found that within the Case Officer's Report (COR) that the appeal scheme would satisfy the provisions of Q.2(1)(e) of the GPDO, it proceeded to refuse prior approval for reasons including that the development would fail the condition of Q.2(1)(e).
5. The Council maintains that it consulted with the Highway Officer. Whilst the Highway Officer did not comment on the prior approval application within the required timescale and before the application was determined, the evidence submitted with the appeal demonstrates that the Highway Officer was

¹ Appeal reference APP/Y3940/W/20/3250212

consulted on 17 May 2022, including with a copy of the transport survey and report.

6. The Council's COR considers the previous appeal. The Council has acknowledged that the previous appeal was dismissed due to the likely highway safety impacts. There is often a strong degree of planning judgement employed when assessing highway safety and the matters raised by the Council related to issues where there was a reasonable potential for difference of opinion.
7. The COR made an assessment of the weight that should be attached to the fallback position. The Council was therefore mindful of the previous appeal decision and the fallback position and have clearly considered these. I am satisfied the previous appeal and fallback position have been treated by the Council as material considerations in its assessment.
8. The Council was entitled to form its view that the fallback position attracts little if any weight. Although I have arrived at a different conclusion on the matter, the Council, to this extent, justified their decision-making.
9. Through the appeal process, the Council has acknowledged that its reference to paragraph Q.2(1)(e) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) within its reason for refusal contradicts the reference in the COR. Nevertheless, the Council still maintains its concern related to the potential for conflict arising from multiple uses with a shared access and that the appeal should be dismissed with limited weight attributed to the fallback position. Therefore, the evidence indicates that the Council would have refused planning permission regardless of the contradiction. An appeal would have been required in any case and so this has not resulted in any unnecessary expense on the part of the appellant, whose appeal submissions only briefly addresses this.
10. Whilst it will be seen from my decision that I have taken a different view from the Council on the acceptability of the proposal having regard to the fallback position, this is a matter of planning judgement. Overall, the Council's decision and reasoning is not so inadequate or irrational as to amount to unreasonable behaviour. The Council clearly substantiated its refusal with specific reference to the proposed works and the relevant parts and tests of the GPDO. I am satisfied that the Council adequately set out its position.
11. The PPG advises that, where Local Planning Authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Conclusion

12. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated and that, therefore, an award of costs is not justified.

J White

INSPECTOR