

## Costs Decision

Site visit made on 29 August 2023

**by J Bell-Williamson MA MRTPI**

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

**Decision date: 6 October 2023**

---

### **Costs application in relation to Appeal Ref: APP/X1545/W/23/3317950 Roundbush Farm, Colchester Road, Great Totham, Essex CM9 8BZ**

- 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 Wyndham-Lewis and Gibson for an award of costs against Maldon District Council.
  - The appeal was made against the refusal of planning permission for 'a) a change of use of the ground floor of the existing outbuilding to Class E(g)(iii) - Commercial, Business so that the applicants can operate their beekeeping practice, Bermondsey Street Bees, from Great Totham; and, b) a change of use of the first floor of the outbuilding to Class C3(a) - so that the applicants can provide occasional overnight sleeping accommodation for family and friends when visiting Roundbush Farm socially, including Sarah's mother and the applicant's two sons. Such occupation would be totally ancillary and incidental to the main Roundbush Farm dwelling. The outbuilding will not be used as a separate dwelling or as an independent unit of residential accommodation'.
- 

### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
  3. The applicants' basis for claiming full costs relates to the Council's alleged unreasonable behaviour in not correctly interpreting and applying development plan policies; a failure to provide evidence to substantiate the reasons for refusal, particularly with regard to the first reason for refusal; not giving due consideration to the use of appropriate conditions; and unreasonably relying on other appeal decisions that did not concern development similar to the appeal proposal.
  4. Taking each of these points in turn, the applicants' principal concerns from their appeal submissions about the interpretation of policies are that there is no conflict with Policy S8 as the character of the countryside would not be
-

harmed; that proper regard should have been had to Policies S7 and E1; and that the relevance of Policies D1 and H4 is unclear.

5. Policy S8 requires two provisions to be met for permission to be granted: that the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the proposal is for a use as listed and it accords with the relevant policy or policies referred to in relation to that particular use. The Council assessed the proposal against both provisions and found in respect of the second provision that the proposed business use would not accord with Policy E4 (the assessment under the heading 'principle of development – agricultural development'). This was the main basis for the first reason for refusal.
6. It also found harm with regard to the effect on the intrinsic character and beauty of the countryside, but I accept that the reasons for this are not fully justified in the officer's report. However, given the basis of the first reason for refusal, particularly the conflict with Policies S8 and E4, it is not possible to infer that had the Council found the effect on the character and appearance of the countryside to be acceptable it would have overcome the reason for refusal and negated the need for the appeal in respect of this issue.
7. The applicants contend that Policies S7 and E1 include general provisions in support of the appeal proposal, but the Council subsequently gave reasons why it considers the policies do not apply in this case, as did I in the appeal decision. It is, therefore, not necessary to repeat those reasons here, suffice to say that I can find no unreasonable behaviour on the Council's part in terms of its approach to these policies and their relevance to the proposed development in this case.
8. I accept that Policy D1 is less directly relevant in this case as it concerns design quality and the built environment, and its detailed provisions relate principally to new buildings. Similarly, Policy H4 concerning the effective use of land appears to include no specific provisions that have a direct bearing on the appeal proposal where no development in terms of physical changes to the building or site are proposed. I acknowledge also that there appears to be no elaboration of the bearing the National Planning Policy Framework has in this case.
9. However, these policy references were not the sole basis for either of the reasons for refusal, particularly due to the reliance on Policy S8 concerning the effects of development outside settlement boundaries. Consequently, it is not possible to argue that had the Council not referred to these other policies it would have resulted in a successful outcome, thereby negating the need for the appeal.
10. The Council refers to two appeal decisions in support of its case. The applicants' main reason for arguing that they are not relevant is that they involve new buildings, whereas the current proposal is for use of an existing building. However, this does not have a direct bearing on their relevance as the main considerations in each case are the functional and physical relationship between the main and ancillary buildings. These considerations are relevant and similar whether the proposal involves new, replacement or existing buildings.

11. While different locations are inevitably involved in each case, the Council quite reasonably used the earlier decisions to illustrate the principles of how similar uses have been addressed. In particular, the proposal in the second appeal referred to in my appeal decision shares a number of the same characteristics as the current proposal in terms of facilities within the building, distance from the main house and access arrangements.
12. Moreover, the Council also used this decision to draw attention to its concerns about the difficulty of monitoring or enforcing an occupancy condition. While planning decisions should be taken on their own merits, they should also be consistent and it is not unreasonable for the Council to draw attention to cases which it considers are similar to the current proposal. Given my findings with regard to the exceptional nature of a condition limiting a permission to specific beneficiaries, the Council was not bound to consider this type of condition with regard to whether its concerns could be overcome. As such, there is no unreasonable behaviour on the Council's part with regard to this matter.
13. Therefore, taking these findings as a whole, there is no basis for me to conclude that the Council's approach with regard to this proposal amounts to unreasonable behaviour on its part.
14. Accordingly, having considered this costs application on its merits, for the reasons given I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

*J Bell-Williamson*

INSPECTOR