



Costs Decision

Site visit made on 13 September 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2023

Costs application in relation to Appeal Ref: APP/J0405/W/23/3315027 Weatherhead Farm, Barretts End, Leckhampstead, Buckinghamshire MK18 5NP

- 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 & Mrs Gurney for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of the Council to grant approval required under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of part of an agricultural building to a flexible commercial use.
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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. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.
3. The PPG sets out that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. Such conditions should not be used where there are no real prospects at all that the action in question being performed within the time limit imposed by the permission, though it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition)¹.
4. The cost application essentially relies on the fact that the Council's concerns in relation to transport and highway impacts could have been addressed by a Grampian condition requiring the provision of passing places. The applicant submits that this approach is consistent with well-established case law and recent appeal decisions. By refusing to grant permission on grounds which were capable of being dealt with by condition, it is the applicant's view that the Council behaved unreasonably.
5. There is general discretion whether or not to grant permission subject to a Grampian condition(s) and this is ultimately a matter of planning judgement based on the circumstances of the site and the proposal. In the absence of any

¹ Planning Practice Guidance Paragraph: 009 Reference ID: 21a-009-20140306

details identifying the extent of land ownership and the location of the passing places, the Council took the view that there was a lack of certainty and therefore no real prospect that the passing places would be provided within the relevant period. Given the uncertainty of land ownership, the enforceability of the condition was also questioned by the Council. This was a legitimate planning judgement.

6. The lack of detail as set out above casts doubts as to whether the highway improvements could be provided. Thus, the submission failed to demonstrate that the highway concerns were capable of being dealt with by condition. Whilst a Section 278 Agreement could secure off-site works, a planning condition would nevertheless be necessary as a mechanism to ensure the deliverability and enforceability of the highway improvements. Therefore, having regard to the above, I do not agree that the Council's behaviour was unreasonable.
7. In any event, for the reasons set out within my accompanying decision, the provisions of Schedule 2, Part 3, Class R of the GPDO make it clear that it is only the change of use that is permitted. Class R does not in itself sanction any associated operational development reasonably necessary to use the building or land for the use proposed under Class R. Therefore, a condition securing the provision of passing places would not be appropriate.
8. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated. The cost application is therefore refused.

H Wilkinson

INSPECTOR