



Costs Decision

Site visit made on 25 July 2023

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

**Costs application in relation to Appeal Ref: APP/D1265/W/22/3307669
Walston Poultry Farm Ltd, Horseshoe's to Gaunts Common Lane, Gaunts
Common, Dorset BH21 4JR**

- 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 Mrs. Samantha Friend for a full award of costs against Dorset Council and a partial award of costs against Natural England.
 - The appeal was against the refusal of planning permission for change of use from agricultural to 8 no. self-storage (B8 storage only) units.
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Decision

1. The application for an award of costs against Dorset Council 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, insofar as it relates to the Council, essentially relies on the fact the Council Officers recommended that planning permission be granted for the proposal, but that the Council Members took a different course of action without adequate reason to do so. This, in the appellant's view, amounts to unreasonable behaviour and resulted in unnecessary and wasted expense being incurred.
4. While the Council is not duty bound to follow the advice of its professional officers if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. The application sought to address Council concerns relating to an earlier scheme that was refused. In this case the applicant proposed to restrict the use to storage only and removed the previously refused distribution element of the proposal to reduce site activity and the number of potential vehicle movements to the facility.
6. Council planning officer's and highway advisers assessed traffic data relating to similar proposals and in the case of the appeal scheme, the lower number of storage units and occupiers proposed at the site would not lead to any substantial volumes of traffic movements, such that there would be harmful effects on local character and living conditions. They also highlighted the existing unfettered agricultural use which could evolve and result in a higher

proportion of daily vehicle movements than the current situation, without any controls placed on the time of day these could operate. Conditions were proposed by officers that would limit the number of site operators to 8, restrict storage to internal areas only, while limiting the time of day when the facility could be used. The conditions are considered reasonable, necessary and enforceable. Those factors, in my view provided members with clear evidence that the scheme would be diminished in scale to reduce activity and vehicle movements at the site. Nonetheless, there appears to be little scrutiny of the suggested conditions.

7. The committee members correctly alluded to the potentially higher trip rates denoted by the appellant's traffic data. Nevertheless, they have not clearly quantified how these would lead to harmful impacts in terms of noise, particularly given that there is an existing agricultural use at the appeal site that could be intensified through an alternative activity within that use. The number of future users would also be low, while the hours in which vehicles could access the site would be restricted. Moreover, they did not describe, in reaching their decision, how the increased movements and sounds would be at a level that would be unacceptable to nearby residential occupiers. Simply indicating that there would be increased vehicle movements anticipated does not equate to harmful effects, and the committee should have clarified in greater detail why these would have amounted to a refusal of the scheme.
8. The Council's refusal reason found that the proposal is likely to lead to increased movements at the site that would result in a significantly more intensive use than the poultry farm use. Yet, in coming to this view, they have not described how that more concentrated effect would harmfully impact site tranquillity and the wider character of the area. The site is already subject to sounds and vibrations from tractors and HGVs which effect the ambient character of the immediate locality. Additional movements associated with the proposal would be similar in character in terms of their sound and there is little justification, in the submitted evidence, that members of the committee reasoned how that increase in activity would be substantially different and lead to negative impacts on the character of the countryside or erode any unique characteristics of the area.
9. I acknowledge that the committee were not obliged to accept the findings of the submitted transport report, and instead chose to rely on local knowledge of the area's character and transport network. But there is very limited information through sound reasoning in how the existing baseline conditions on those matters would be clearly harmed by the proposal.
10. Therefore, based on my assessment of the case, including the committee transcript, the Council failed to substantiate each reason for refusal and used vague and generalised assertions about the proposals' impact which were unsupported by any objective analysis. The Council was also rather quick to dismiss the conditions suggested in the officer's report without sufficient scrutiny as to whether they could overcome unacceptable impacts. The combination of those failings has led to the Council acting unreasonably.
11. An award of costs is also sought against Natural England for late and unsubstantiated evidence. This would have been frustrating for the applicant, and has resulted in them having to address the matters raised by NE. However, in carrying out that exercise the applicant has largely replicated earlier

arguments presented in the appeal case and initial Costs application. Therefore, I do not consider that the applicant has incurred considerable time or unnecessary expense in addressing NE's comments, such that it would amount to unreasonable behaviour on their part.

12. Notwithstanding my findings on the case against NE, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs against Dorset Council is therefore warranted.

Costs Order

13. 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 Dorset Council shall pay to Mrs. Samantha Friend, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Dorset 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.

RE Jones

INSPECTOR