



Costs Decisions

Site visit made on 4 October 2023

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Costs application A in relation to Appeal Ref: APP/T0355/W/22/3304019 Land to the west of Shepherds Lane, Hurley SL6 5NG

- 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 Hurleyford Farms for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for a replacement agricultural/commercial building.
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Costs application B in relation to Appeal Ref: APP/T0355/W/22/3311884 Land to the west of Shepherds Lane, Hurley SL6 5NG

- 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 Hurleyford Farms for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of outline planning permission for a replacement building.
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Decisions

Costs Application A

1. The application for an award of costs is allowed in the terms set out below.

Costs Application B

2. The application for an award of costs is allowed in the terms set out below.

Reasons

3. The costs applications relate to two applications for similar developments which are referred to as Appeals A¹ and B² in my decision on the appeals. Because they both refer, at least in part to common issues I shall deal with both applications for costs together in this decision in order to avoid unnecessary duplication.
4. The Planning Practice Guidance 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.

¹ APP/T0355/W/22/3304019

² APP/T0355/W/22/3311884

5. In application A the applicant explains that the Council requested that a bat emergence survey be carried out. The applicant asked for an assurance from the planning officer that the proposed development would be likely to be acceptable in other respects and this assurance was given. Subsequently a more senior officer contacted the applicant to say that although the bat emergence survey had been carried out there were other concerns as to whether the proposal would accord with planning policy on Green Belt. Those concerns were specifically the size of the proposed building in relation to that of the existing building, and whether the stated change of use to storage had taken place. Following this, the Council did not issue its decision and the applicant had little choice other than to appeal.
6. The basis for application B is that the reason for refusal was based on the change of use of the building not having taken place. The applicant provided information to the Council to demonstrate that the change of use had taken place, but this was disregarded.
7. The Council's response in application A is that its request for a bat emergence survey was in accordance with *Circular 06/2005 Biodiversity and Geological Conservation*. The Council invited the applicant to withdraw the application, but this was not done. The case officer was on sick leave and compassionate leave during the processing of the planning application, which unfortunately resulted in some delay. The case officer's team leader was justified in asking for further information to demonstrate that the proposal would meet the requirements of national planning policy on Green Belt, but the information provided by the applicant was insufficient.
8. In application B, the Council states that no evidence was provided by the applicant to support the notification to the Council under Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 or implementation of the change of use. The applicant did not ask the Council what evidence would be required.
9. The reason for refusal and the putative reason in respect of both planning applications refers to the change of use of the building (to partial storage use) not having been demonstrated. The change of use was carried out under Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015. The applicant provided the requisite notification to the Council and included a copy of the notification form with the appeal B submission. The Council's statements and its officer's report for appeal B refer to the notification. The Council has not disputed that the relevant condition under Class R was complied with.
10. There is no requirement for a developer exercising the permitted development right under Class R to demonstrate or provide evidence to the Council that the change of use has taken place. It would of course have been open to the Council to carry out a site visit to ascertain whether the change of use had taken place. Moreover, a site visit would have been necessary in connection with the planning applications.
11. The Council has not stated that it carried out a site visit or that its officer observed at any time that the change of use had not taken place and it has not put forward any other evidence to demonstrate this.

12. Instead, it seems that the Council expected the applicant to prove, through submission of evidence that the change of use had taken place. The applicant did provide photographic evidence to the Council, but the Council was not satisfied with this.
13. On the evidence before me, the Council based its decisions on an inaccurate assumption and discounted evidence provided by the applicant. There is nothing before me to indicate that the Council carried out any site visit to ascertain whether the change of use had taken place. This clearly amounts to unreasonable behaviour.
14. Furthermore, a significant amount of time elapsed after the statutory determination period expired without the Council issuing its decision in respect of Appeal A. The process of carrying out the bat emergence survey and consultation with the Council's ecologist occupied much of that time, but there was still a two-month period after this during which the Council failed to issue its decision.
15. Although the Council's case officer was on sick leave and compassionate leave during the processing of the Appeal A proposal they had returned by 4 May 2022. The Council's ecologist confirmed that they had no objection on 25 May 2022, but the Council has not explained why it did not then issue its decision. In these circumstances the non-determination of the application amounts to unreasonable behaviour.
16. The appeal against non-determination was submitted on 27 July 2022. The second planning application was dated 10 August 2022. Although the latter was determined by the Council within 2 months, the reason for refusal of that application was inaccurate and unsubstantiated.
17. For these reasons I find that unreasonable behaviour, resulting in unnecessary or wasted expense in respect of both appeals has been demonstrated.
18. I find that the Council's request for a bat emergence survey to be carried out was reasonable, given the findings of the preliminary ecological appraisal and preliminary roost assessment. This element of the work related to the Council's assessment of the planning application and was not at issue in either appeal, so would not be covered by an award of costs.
19. However, when Appeal A was submitted, the Council's putative reason for refusal was not available and given the uncertainty in this respect, the applicant incurred some expense in the appeal addressing the work undertaken in respect of the bat emergence survey. Furthermore, although the Council's putative reason relied only on the allegation that the change of use had not taken place, the applicant understandably felt it necessary to address the concern that had been expressed by the team leader about the size of the building.

Costs Order

20. 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 the Council of the Royal Borough of Windsor and Maidenhead shall pay to Hurleyford Farms the costs of both appeal proceedings described in the heading

of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to the Council of the Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Nick Palmer

INSPECTOR