



Costs Decision

Hearing held on 10 October 2023

Site visit made on 10 October 2023

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 01 November 2023

Costs application in relation to Appeal Ref: APP/T2350/W/23/3325434 Land adjacent to Miles Hill, Moor Lane, Billington BB7 9JH

- 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 Tom Procter for a full award of costs against Ribble Valley Borough Council.
 - The appeal was against the refusal of the Council to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the proposed conversion/redevelopment of two agricultural buildings into 2 dwellings.
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Decision

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

Reasons

2. Parties in planning appeals are normally expected to meet their own expenses. However, the Planning Practice Guidance (the 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 applicant seeks to recover the full costs incurred in the appeal on grounds that the Council behaved unreasonably in relation to each of the 3 reasons for which the planning application subject of the appeal was refused.
4. The appeal relates to the resubmission of a refused application¹ that was dismissed on appeal². The earlier scheme was deemed to meet the requirements of Class Q of the GPDO in relation to building operations reasonably necessary to convert the buildings. However, the appeal application was refused on grounds that it does not meet these same GPDO requirements.
5. The PPG sets out the types of behaviour that may give rise to a substantive award against a local planning authority, including not determining similar cases in a consistent manner. In this case, the application is a resubmission of a substantially similar scheme and I am not aware that there have been material changes in the intervening time. Consequently, irrespective of my findings on this main issue in the appeal, the inconsistency in the Council's decision making does constitute unreasonable behaviour.

¹ ref 3/2022/0436

² ref APP/T2350/W/22/3304870

6. The appeal scheme was amended in an attempt to overcome the previous Inspector's concerns relating to the external appearance of the buildings and the harm to visual amenity. While the scheme has been designed by a professional architect, it was not unreasonable of the Council to reach its own conclusion contrary to that of the applicant. The Council has substantiated its reasons for refusal in the appeal, including with reference to the previous appeal decision. As can be seen from my appeal decision, I also found that the proposal would harm the character and appearance of the buildings and the countryside and I dismissed the appeal accordingly.
7. The resubmitted application was accompanied by a preliminary bat roost assessment report, in order to address the previous Inspector's concerns. This reasonably ruled out impacts on bats, nesting birds and barn owls and it satisfied the Council's concerns in relation to these species. However, it does not follow that it was unreasonable of the Council to then refuse the application on grounds relating to potential adverse effects on other protected species, particularly badgers.
8. The Council did not consult with its ecological advisor or the local badger group during the processing of the application subject of the appeal. However, the Lancashire Badger Group had provided advice in June 2022 in relation to the previous application. Given the substantially similar schemes and the short elapse of time, the 2022 advice remains current and relevant and it was not unreasonable of the Council to rely upon the earlier consultation response.
9. Natural England's standing advice provides guidance for both developers and local planning authorities in relation to protected species. It advises that before submitting an application, developers need to know if protected species may be present on or near the site and if they would be affected by the proposed development. Developers are advised to submit all the appropriate information about the effect of the proposal on protected species with their application.
10. As the applicant was aware of the local badger group's response in June 2022, he would know that badgers are present in the area and they could be affected by the proposed development. Consequently, as advised by Natural England, he could have addressed potential impacts on badgers as part of the application submission.
11. The standing advice also sets out that the local planning authority can ask for further information, including surveys or assessments, if it does not have enough information to make a decision. However, the Council did not behave unreasonably by failing to ask for further information when it was going to refuse the application for other substantive reasons. In this context, it was not unreasonable for the application to then be refused in part on grounds that there was insufficient information to assess the impact on protected species.
12. The appellant considers that the parties could have worked together to agree an acceptable form of development. However, while concerns in relation to protected species were addressed in the appeal, the parties maintained their respective positions on the other main issues and no amended plans were submitted to demonstrate an alternative scheme. Having regard to the written appeal evidence, and the discussions at the Hearing, there is little compelling evidence that the parties would have been able to agree an acceptable scheme in order that the appeal could have been avoided. Irrespective, the Council was

entitled to refuse the application and the applicant exercised his right to test the Council's reasons for refusal on appeal.

13. Drawing all this together, the Council did not behave unreasonably in relation to the second and third reasons for refusal. However, specifically in relation to the first reason for refusal, it did behave unreasonably by failing to determine the 2 similar applications at this site in a consistent manner. Even so, as the Council's decision did not prevent or delay development which should clearly be permitted, and the appeal could not have been avoided, a full award of costs is not justified. I am not aware that the applicant has been put to significant additional expense in countering the Council's position in relation to the first reason for refusal, this being the building operations reasonably necessary for the purposes of Class Q. Nevertheless, on the basis that some extra cost would have been incurred, an award specifically in this regard is justified.

Conclusion

14. I therefore find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense as described in the PPG has been demonstrated and a partial award of costs is justified.

Costs Order

15. 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 Ribble Valley Borough Council shall pay to Mr Tom Procter, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's reason for refusal relating specifically to the requirements of Class Q(b) of the GPDO; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Ribble Valley Borough 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.

Sarah Manchester

INSPECTOR