The Planning Inspectorate

Costs Decision

Hearing Held on 17 October 2023
Site visit made on 18 October 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2023

Costs application in relation to:
Appeal A: APP/J1915/C/22/3291052
Appeal B: APP/J1915/W/23/3317491
Land at Quinbury Farm, Hay Street, Braughing, Ware, Hertfordshire SG11 2RE

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 320, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Adam Saggers, Quinbury Farm Estate Limited, for a full award of costs against East Hertfordshire District Council.
- The Hearing was in connection with appeals against an enforcement notice alleging Without planning permission, the erection of 4no dwelling houses (Appeal A) and the refusal of planning permission for "Continued erection of four dwellings to the same design and appearance as previously approved under ref. 3/14/1204/FP together with all supporting infrastructure following removal of the original barns." (Appeal B).

Decision

1. The application for a full award of costs is refused. However, a partial award of costs against East Hertfordshire District Council is approved in the terms set out below in the Costs Order.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)[1] advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Substantive Matters

3. Paragraph 049 of the PPG[2] advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. I set out below my findings with regard to the various examples of unreasonable behaviour, as claimed by the appellant in this case.

[1] Reference ID: 16-030-20140306
[2] Reference ID: 16-049-20140306

i) Not determining similar cases in a consistent manner

4. The Council set out in its enforcement statement that it did not object to the development on grounds including relating to design, layout, character and appearance[3]. By that time the former agricultural buildings had been demolished and as such the Council must have been contemplating a new-build development. This stance is at odds with refusing planning permission for four new build dwellings on grounds which included character and appearance. The Council explains that this anomaly needs to be viewed in the context of its suggested amendment to the alleged breach of planning control to "works for the erection of 4no dwelling houses". However, whilst I acknowledge the notice was corrected accordingly, I am in no doubt that that the Council's enforcement statement is directed against 4 dwellings, rather than just their preliminary works[4]. I find that the Council's inconsistent approach in this regard amounted to unreasonable behaviour.

5. There are further inconsistencies in the Council's position regarding character and appearance matters. Whilst its enforcement statement refers to the development going beyond limited infill[5], the planning officer report states that it does not constitute an infill scheme. The officer report also refers to the site being in an isolated rural area, whereas at the Hearing the Council conceded that it was not an isolated location.

6. Drawing these considerations together I find the Council's position with regard to character and appearance to be somewhat confused and ambivalent. It has not articulated its opposition to the scheme on character and appearance grounds consistently.

7. However, for the avoidance of doubt, I consider that the Council's decision not to grant planning permission for an identical design to that approved in 2014 did not in itself amount to an inconsistent approach. Whilst I found this to be a significant material consideration, ultimately the baseline for the schemes were distinguishable, with the former a conversion scheme and the latter a new build.

ii) Acting contrary to, or not following, well-established case law.

8. The appellant relies on the *Vallis* case to support their claim that the Council failed to factor into its conclusions, on whether enforcement action should be taken and planning permission granted, the previous 2014 grant of planning permission to convert farm buildings on the site.

9. I have set out in my main decision that this was an important material consideration. I concur with the appellant that *Vallis* is authority for weighting similarities between a proposed new build scheme and barn conversion which had earlier been permitted. However, the Council's officer report regarding the planning application did acknowledge the existence of the case law, that it was a material consideration, but that the present case was distinguished by the lack of materials that could be re-used, variation to the site boundary and change to the policy framework.

[3] See paragraphs 3.17 and 3.18. Reference to the need for updated or new information appears to be specifically directed to matters of climate change and sustainable design, flood risk and ecology.
[4] See for example para. 3.2 which states that "… the appellant considers that planning permission should be granted for the erection of 4no dwelling houses" and "It is the Council's view that the erection 4no dwellinghouses would not comply with the District Plan".
[5] See paras 3.7 and 11.1.

10. Whilst the lack of original material was not explicitly cited in the eventual refusal reason, reference later in the officer report to the site not containing any remnants of the barn structure suggests that this factor was at least in the minds of officers. It also seems to me that the significance of the *Vallis* case not being covered in the Council's decision making leading up to enforcement action can reasonably be explained by the development being in its early stages at that point. Whilst I did not reach the same judgment, that the Council found the previous grant of planning permission not to be determinative, did not equate to unreasonable behaviour.

iii) Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.

11. Notwithstanding the resistance in the earlier plan to new build residential development in the countryside, when comparing the wording of the character and appearance related policies in the 2007 and 2018 development plans, I find that in practice there is very little, if any, material difference between requirements "not to detract significantly from"[6] and to be "compatible with" or "appropriate to"[7] and "to demonstrate compatibility with"[8] and "respecting or improving"[9].

12. However, whilst it was a significant material planning consideration, the earlier scheme can be distinguished as it concerned conversion rather than new-build. The previous Inspector's decision had indicated the conversion scheme, not a new-build scheme as presently proposed, was acceptable in principle.

13. I am not persuaded that the Council was duty bound to grant planning permission in this case, on the basis of the previous grant of planning permission in 2014. It is simply not the case, as a matter of fact, that the Council are opposing a scheme that an Inspector had indicated to be acceptable. It would have been possible to conclude differently in relation to the two schemes without offending this principle. I am not persuaded that the Council have been inconsistent in this specific regard.

iv) Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

14. Whilst I found the development to be satisfactory when taking into account other material considerations, I nevertheless found it to be in conflict with the development plan as a whole. It required the various factors in support of and against the scheme to be weighted, and the application of the so-called tilted balance, set out at paragraph 11d) of the National Planning Policy Framework and subsequently the statutory planning balance as set out at section 38(6) of the Planning and Compulsory Purchase Act 2004. As such the claim that development was prevented which should clearly [my emphasis] have been permitted is simply not compelling.

[6] Policy GBC9 - 2007
[7] Policy GBR2 - 2018
[8] Policy ENV1 - 2007
[9] Policy DES4 - 2018

v) Failure to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

15. The appellant says the Council failed to substantiate its reason for refusing planning permission on character and appearance grounds. I did not concur with the Council that there was character and appearance harm. However, it seems to me that ultimately this was a matter of judgment and, notwithstanding the concerns I have already expressed above regarding consistency, that it did within the body of the Appeal B defence explain its reservations in this respect regarding new-build development on the site[10].

Procedural Matters

16. Paragraph 047 of the PPG[11] advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably in relation to procedural matters at appeal. I set out below my findings with regard to the examples of unreasonable behaviour, as claimed by the appellant in this case.

vi) lack of co-operation with the other party or parties

17. The appellant alleges that the Council has failed to be cooperative and has unreasonably delayed matters. I have had regard to the timeline of correspondence with the Council, submitted by the appellant in support of the planning appeal. I agree that the planning application process, which took almost ten months to complete, was somewhat protracted.

18. However, I am mindful that the appellant had the right to appeal against the Council's failure to determine the application, however did not do so. In addition, it is not at all certain that further meetings with the Council would have resulted in a different outcome. I am not therefore persuaded from the information before me that there is evidence to substantiate a claim that any lack of co-operation in this case has resulted in wasted expense.

vii) introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

19. I found that the Council introduced a reason to refuse the development on character and appearance grounds, which was at odds with its stance on the enforcement case. However, despite the inconsistent approach, the character and appearance reason formed part of the Council's formal decision on the planning application and was known to the appellant prior to the appeal being lodged. This did not give rise to any adjournment in the appeal proceedings and the appellant has had the opportunity to argue their case fully against the grounds on which planning permission was refused.

Conclusion

20. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated having regard to not determining similar cases in a consistent manner (in relation to ground i) above

[10] The Council, for example, referred to the residential characteristics and inward facing nature of the development that would not address the street.
[11] Reference ID: 16-047-20140306

and as defined in the Costs Order). A partial award of costs is therefore justified on this basis.

21. However, for the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the other claimed grounds.

Costs Order

22. 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 East Hertfordshire District Council shall pay to Mr Adam Saggers, Quinbury Farm Estate Limited, the costs of the appeal proceedings, **limited to those costs incurred in respect of identifying inconsistency between the Council's enforcement and planning cases regarding character and appearance matters**; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

23. The applicant is now invited to submit to East Hertfordshire District 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.

R Merrett

INSPECTOR