



Costs Decision

Site visit made on 28 May 2024

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th July 2024

Costs application in relation to Appeal Ref: APP/D3505/W/23/3325271 Red House Farm, Duke Street, Hintlesham IP8 3PW

- 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 Dan Davies, Landex Ltd, for a full award of costs against Babergh District Council.
- The appeal was against the refusal of an application for planning permission for the erection of 5No. single storey dwellings (revised layout and extension of residential curtilage for dwellings approved under DC/21/05992).

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 and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The guidance encourages authorities, amongst other things, to properly exercise their development management responsibilities, and rely only on reasons for refusal which stand up to scrutiny based on the planning merits of the case.
3. The applicant submits that the Council has failed to adequately consider, and give appropriate weight to, material considerations including the original Class Q conversion permission¹ and the subsequent extant permission², the latter which they suggest has been implemented on the site. They emphasise that the Council failed to consider the previous planning permission as a fallback position and has therefore failed to give it proper weight. They consider that the previous permission establishes the principle of development, that the demolition of the farm buildings solidifies that fallback position, and that it complies with JLP Policy SP03. They assert that the Council was, therefore, wrong to object to the principle of development when the application only proposed an alternative layout to the most recent approved scheme.
4. As I have stated in my decision, the most recently approved scheme is a material consideration in considering this appeal, with the Class Q conversion approval being the fallback position. In this regard, the Council considered that

¹ DC/20/01597

² DC/21/05992

the Class Q conversion was more harmful than the latter approved scheme and permitted the extension of the site area, together with the replacement buildings as a result. I understand, therefore, why the Council said that technically there was no longer a fallback position as the barns have been demolished. On this basis, the Council's position on these two permissions has been explained and understood and the Council was right to consider the recently approved scheme as a material consideration, whilst mindful of the origins of the approved development.

5. The Council was correct in considering the principle of the development under JLP Policy SP03 as the increased site area and extending the development into the open countryside was a significant change in circumstances. Whilst the Council considered both previous approvals as material considerations, the Council made it clear why the new proposal would have a harmful effect on the character and appearance of the area as well as being contrary to Policy SP03.
6. The applicant suggests that the introduction of new objections and refusal reasons after the Council made its decision was unreasonable and the references to all emerging policies of the JLP should have been made earlier, not just in relation to JLP Policy SP03. They state that the appeal should have been focussed on the issues in the decision notice and not matters raised later in the Council's statement of case.
7. Owing to the period between the Council making its decision and the writing of its appeal statement, the Council was required to refer to the change in policy circumstances. Furthermore, as has previously been explained, I am required to make my decision based on the development plan and national policy which are in place at the time of my decision. Paragraph 48 of the National Planning Policy Framework (the Framework) states that local planning authorities may give weight to relevant policies in emerging plans. In this regard, the decision notice referred to emerging JLP Policy SP03 which was pivotal to its decision. However, it was not a requirement for the Council to list all the emerging issues. In my view, whilst it is regrettable, it was not necessary for all these additional matters and policy references to be raised any earlier. Consequently, in the appeal proceedings, additional time has been given for these matters to be addressed.
8. I note the applicant's reference to a recent costs decision within this same authority area, where it is suggested that the Inspector considered that the Council sought to introduce new evidence unrelated to the reasons for refusal and that this was unreasonable. However, it has not been made clear to me that this costs application was made in relation to the adoption of a new Local Plan and the issues in that case appear to be specific to it.
9. The Council has acknowledged that it omitted to include a reason for refusal on the affordable housing commuted sum. It has accepted that this was an error, but I note from the correspondence that this was quickly communicated with the appellant. It also appears to have partly arisen because of an error on the application form calculating the site area. The additional proposed site area clearly triggers the policy requirement for affordable housing, and it would have been wrong for the Council to not seek to secure this.
10. It is further suggested that the second reason for refusal, relating to the garage doors and courtyard, were matters that could have been resolved by condition, and that this had been done before by the Council. They suggest

that the Council has therefore not been consistent in its decision-making and the applicant has incurred wasted expenses addressing this.

11. I note from the information before me that a debate has been ongoing between the two parties regarding the garage doors. The Council had strong views that these were an attractive feature of the traditional farmyard arrangement. It is also evident that the appellant was seeking to remove the condition in relation to this on the extant permission. Therefore, I understand that the Council wished to debate this point of detail at an appeal to provide clarity on this matter and this is a reasonable course of action to take.
12. Finally, the applicant considers that the requirement for an affordable housing contribution does not meet the CIL Regulations or the PPG. However, as I have already determined, the proposed increased site area tipped the development over the threshold and subsequently was required to provide the affordable housing stated in JLP Policy LP02. In this regard, I have found that the affordable housing commuted sum would be necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development.
13. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. The appellant had to address those concerns and the evidence of third parties in any event.
14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

G Bayliss

INSPECTOR