



Costs Decision

Site visit made on 20 August 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2024

Costs application in relation to Appeal Ref: APP/L2630/W/23/3335813 Pied Bridge Farm, Burntoak Lane, Alburgh, HARLESTON, Norfolk, IP20 0DT

- 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 Kelly and Andrew Denny Piedbridge Pigs for a full award of costs against South Norfolk District Council.
- The appeal was against the refusal of the Council to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for prior approval for the notification for Prior Approval for a proposed change of use and associated building works of an agricultural building to a dwellinghouse (QA and QB).

Decision

1. The application for a full award of costs is allowed in part, 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. For an award to be made the two parts of the tests have to be met, unreasonable behaviour that also results in unnecessary or wasted expense.
3. The applicant makes reference to examples of unreasonable behaviour. In particular, it is said that the Council have withdrawn of part of the reason for refusal; been inconsistent in determination of similar applications; ignored established appeal precedent; made unsubstantiated arguments where objective evidence could have been used; and not taken due care, attention and provided misleading advice.
4. The Planning Practice Guide advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters and the substance of the matter under appeal. This includes withdrawal of any reason for refusal and refusing planning permission on a planning ground capable of being dealt with by conditions.
5. The Council's refusal reason refers to the proximity of the proposal to multiple other agricultural buildings which could be brought back into active use that would make the appeal building undesirable for a change of use to a dwelling. The Council initially stated there was no mechanism that the various agricultural buildings within the appellant's ownership would be demolished to prevent them being brought back into active farming use. This is despite the applicant setting out a case for this within the planning statement, a prior

- notification for demolition of these buildings having been granted in July 2023 and providing an example of a similar case that the Council had determined.
6. The Council's statement of case for the appeal subsequently explains that an appropriately worded condition could secure the demolition of the buildings prior to the occupation of the dwelling if the appeal was allowed. The appeal statement provides no further discussion on these buildings, and it has not provided any rebuttal to this element of the costs application.
 7. The Council's position at appeal does not withdraw the entire reason for refusal. Nevertheless, the Council's change in stance on this matter amounts to unreasonable behaviour. In my view as it is also matter capable of being dealt with by condition which the applicant initially set out within the planning statement to accompany the planning application.
 8. The applicant claims this behaviour has resulted in unnecessary and wasted expense. However, although the applicant submitted further information in relation to the redundant piggery buildings, the Council acknowledged the buildings were not in use, as well as referring to the prior approval for demolition. The Council does not appear to be disputing their vacancy, rather the theoretical possibility that they could be brought back into use and the mechanisms to condition their removal.
 9. The Council was unreasonable in taking this stance, and subsequently changing its view without any substantive discussion. However, whilst the information in relation to the redundancy of the site supports the scheme, my view is that the applicant took it upon themselves to prepare this additional information contained to support the appeal. The applicant also claims that the Council have not determined similar cases in a consistent manner. They infer that had the Council been consistent and diligent in their decision making process, the feasibility of conditioning prior approvals, which the Council has previously done, would have been apparent. The Council has not refuted this.
 10. Although not dealt with in great detail, and no evidence of discussion between solicitors and the Council has been provided, the applicant was put to the unnecessary, and indeed unavoidable, expense of preparing information to refute the Council's case where it has repeated its arguments in respect of the course of the appeal. It follows that it meets the tests for an award.
 11. The applicant also suggests that the Council behaved unreasonably requesting further information in relation to noise and odour because it then ignored it. The applicant also considers the Council failed to have regard to a material consideration of a similar appeal¹. From the limited information before me, the Ardley House farm buildings appeal does not appear comparable given the Inspector noted there would be blank walls backing onto the operational farm. Therefore I do not agree that this was a precedent against which to approve the original application. Furthermore, the case officer does not ignore this appeal, they suggested in light of this that a noise and odour assessment may be appropriate, which as each application is considered on its own merits is not unreasonable.
 12. The applicant's noise and odour findings that significant noise impacts could be avoided, were accepted by the Council's environmental health consultee

¹ Appeal Ref: APP/d3505/W/20/3254460

subject to conditions. However, at the application stage the Council took a different view to the applicant and the relevant consultee and maintained this position at appeal. I accept that the officer report does not explicitly reference the assessments by author, title and submission date. There is no discussion of the mitigation. However, in my opinion, they have explained their rationale for their view. There is some assessment of the farming activity currently pertaining to Longbridge Barn contained within the officer report and the Council's statement. Whilst brief it offers a clear basis for an assessment of the proposals and the potential impact upon future occupiers and substantiates the reason for refusal.

13. Moreover, the appeal statement sets out that development does not have to be a statutory nuisance to affect the living conditions of future occupiers of the building. Although I have disagreed with the Council's arguments on the appeal, and their reports appear to be very similar to earlier ones produced, this still demonstrates that the Council had taken into account the associated documents and consultee comments. The Council did not refuse the application on the basis that a land contamination condition could not be attached. Therefore the noise assessment and odour reports were not an unwasted and unnecessary expense.
14. I have considered the correspondence between the applicant and the Council. This demonstrates that there was considerable discussion between the parties. I am satisfied from this evidence that the Council cooperated with the applicant and tried to resolve the issues. Whilst some of the advice may not have been as clear as it could be, I do not consider that the Council's actions represent unreasonable behaviour.
15. Despite the outcome of the appeal, the Council had legitimate grounds to refuse prior approval application. The case was arguable and therefore I conclude that the Council has not prevented or delayed a development that should clearly have been approved. However, I conclude that unreasonable behaviour has directly caused the appellant to incur unnecessary expense as described in the Planning Practice Guidance. It follows that a partial award of costs is justified.

Costs Order

16. 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 South Norfolk District Council shall pay to Kelly and Andrew Denny Piedbridge Pigs the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of the evidence relating to the use of conditions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to the 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.

K Williams

INSPECTOR