



Costs Decision

Site visit made on 10 December 2024

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/W1525/W/24/3345252

Leighams Farm, Leighams Road, Bicknacre, Chelmsford, Essex CM3 4HF

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Barber of M Farnsworth Ltd for a full award of costs against Chelmsford City Council.
 - The appeal was against the grant subject to conditions, of planning permission for a development described as Conversion of an agricultural building to b8 commercial storage with external alterations.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (PPG) advise that irrespective of the outcome of an appeal, 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. Paragraph 16-049-20140306 of the PPG states authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes failing to substantiate reasoning, imposing a condition that is not necessary, relevant to the development, or reasonable, thus not complying with the National Planning Policy Framework (2024) (the Framework) on planning conditions. It also includes not reviewing a case promptly following the lodging of an appeal as part of on-going case management.
4. The appellant's view is the Council imposed a condition not relevant to the development permitted, that is also unreasonable and unnecessary, having regard to the circumstances and effects of the appeal development, relevant policies and the legislation for erecting agricultural buildings. It also asserts the Council did not consult upon the condition or explain its rationale. The Council is of the view it has acted in accordance with the intent and purpose of development plan policies, it has applied conditions appropriately having regard to section 70 of the Act, the PPG, and the relevant material considerations.
5. In principle the Council has sought to approach and impose a planning condition based upon sound planning objectives. Based upon the appellant's submissions at the application stage there is some degree of ambiguity. The application form is a key document where a proposal should be set out. In the

form it expressly states the existing use is as an agricultural storage building and the description of the development proposes 'change of use of agricultural storage buildings...'.

6. The Planning Statement implies an agricultural use at various points. For example, it re-iterates the change of use from an agricultural building, refers to difficulties for agricultural enterprises, that movements will be measurably less than the agricultural use, and that the building is operating as part of an agricultural unit. It is not entirely surprising the Council viewed the scheme as resulting in the loss of an agricultural building.
7. Although the Council could have clarified matters when seeking a plan upon which to base condition 6, it is entitled to rely upon what is set out in the application, in assessing its merits. In principle, the loss of a building in agricultural use might justify the Council's approach in some circumstances. This coupled with the fact that the condition was not a pre-commencement condition and the effect of future buildings upon the rural area involves some degree of planning judgement, means I do not consider the Council behaved unreasonably in imposing the condition.
8. However, the appellant's appeal statement and accompanying submissions clarified the use is not agricultural, not related to the agricultural operation, and amongst other things provides Valuation Office Agency evidence in this regard. It does not appear the Council has reviewed its case in-light of or fully engaged with the appeal evidence, has not adequately addressed it, or adequately substantiated its reasoning in-light of the new appeal submissions. This is unreasonable behaviour, and it has resulted in the appellant incurring unnecessary expense in the appeal process.
9. Due to the ambiguities in the original application, a full award of costs should not be made. However, a partial award of costs is justified for costs incurred after the submission of the Council's statement of case, where the Council did not adequately substantiate its case in-light of, or adequately address, the submitted evidence.

Costs Order

10. 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 Chelmsford City Council shall pay to Mr R Barber of M Farnsworth Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred as a result of all appeal activity after the submission of the Council's Appeal Statement; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

Mr D Szymanski

INSPECTOR