



Costs Decisions

Site visit made on 10 February 2025

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Costs application in relation to Appeal A Ref: APP/D3505/W/24/3347762

West End Farm, The Common, Mellis, Suffolk IP23 8EF

- 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 Haag of Haags Norfolk and Suffolk Farms for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of planning permission for the construction of open-sided agricultural building.
-

Appeal B Ref: APP/D3505/W/24/3349343

West End Farm, The Common, Mellis, Suffolk IP23 8EF

- 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 Haag of Haags Norfolk and Suffolk Farms for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of planning permission for the construction of open-sided agricultural building.
-

Decision

1. The applications for an award of costs are refused for both Appeal A and Appeal B.

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.
3. The applicant contends that the Council's refusals were clearly unreasonable, with reasons based on vague, and generalised assertions regarding the proposals' impacts, unsupported by objective analysis. They also argue that the Council only focused narrowly on the deemed unacceptable environmental impacts, ignoring the significant environmental benefits as supported by Natural England, and not assessing the overall planning balance.
4. The officer report did identify that the proposed buildings had a justified need, that they should provide environmental benefits in reducing pollution runoff risks and a reduction in ammonia emissions, and that they result from a capital grant scheme. Better clarity would have been gained from a specific planning balance section, and if the weight given to these benefits had been explicitly stated. However, I find that the report when read as a whole does provide sufficient justification of this planning balance overall.

5. My appeal decision sets out why I also dismissed the proposals, including in considering the benefits against the lack of specific Biodiversity Net Gain (BNG) habitat provision. It follows therefore that the principle of the Council's refusals was not 'clearly unreasonable'.
6. The applicant also contends that if the missing BNG and ecology information was so crucial, the applications should not have been validated because these are Local List validation requirements. However, the application form descriptions of 'existing use' state: "agriculture - concrete pads used for storage of manure." The application form BNG sections identify that the applicant does not believe that the general biodiversity gain condition would apply, because the structure will use existing hardstanding. The Design and Access Statement only refers to the concrete pad under the existing manure area. It was therefore understandable and reasonable that the Council did not identify any impact on the field edge immediately at the validation stage.
7. Although the Council could have allowed the requested extension of time for the BNG information to later be provided, there is no statutory requirement to do so. The Statutory Biodiversity Metric submitted for the appeals is not a wasted expense, as this would have had to be produced anyway at an earlier point in the process. Costs applications only relate to costs arising from the appeal process.
8. Moreover, I am unconvinced that agreeing the extension of time would have led to a favourable decision. This is because the applicant maintains that the proposal meets the de minimis exemption with respect to its size, being as the only groundworks outside of the existing hardstanding would be support posts. My appeal decision explains why I disagree with this approach. As such, even had this BNG Metric been sought at validation stage, or submitted following an extension of time, an appeal would still ultimately have been necessary because the Council would have still refused the applications on BNG grounds.
9. The applicant further argues that the Council completely overlooked that the herd numbers would remain at the same level, and therefore create the same amount of manure and ammonia pollutants. They consider the ecology reason for refusal to be making inaccurate assumptions.
10. The Council's refusal for Appeal B was partly based on the Natural England objection that insufficient information was provided in relation to air quality impacts, and that an initial screening should be completed. The officer report notes that the Council was adopting a precautionary approach until such time as Natural England formally alter their position. I find this to be an unpragmatic approach, considering that the same Natural England objection was raised and subsequently withdrawn for Appeal A, indicating that the lack of an Appeal B withdrawal was an oversight. This could have been clarified prior to the determination.
11. The Council also no longer seeks to defend this ecology based reason for refusal, due to the withdrawal of the Natural England holding objection prior to the appeal submissions. This explanation is somewhat tenuous considering this objection was already withdrawn prior to the Appeal A decision. I also find a lack of clarity as to exactly what extent and type of ecological harm led to the reason for refusal, with relation to the Council's statutory duty to have regard to designated sites, and protected and priority species and habitats. I also accept the applicant's submission that available air quality screening tools are not appropriate in this instance.

12. However, even if the imposition of the ecology reason for refusal amounts to unreasonable behaviour, the extent of the applicant's appeal documentation concerned solely with rebutting this element is minimal. No ecological report was submitted, and the air quality screening discussions replicate text from the air quality consultant's correspondence prior to the refusals. The appeal has still been necessary overall in relation to the BNG refusal reason, which to some extent also encompasses ecology matters. Therefore overall, I find insufficient evidence that the applicant incurred unnecessary or wasted expense through solely addressing this aspect of the refusals.
13. The applicant also cites a lack of consistency in the decision making process. However, the other application referenced¹ is materially different because it was entirely on hardstanding, and so no BNG metric was required. I thus find no unreasonable behaviour in this regard.

Conclusion

14. Overall, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified for either appeal.

L N Hughes

INSPECTOR

¹ Park Farm: DC/24/01843