



Costs Decision

Hearing held on 6 February 2025

Site visit made on 6 February 2025

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/V2635/W/24/3351657

- 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 John Scott for a full award of costs against King's Lynn and West Norfolk Borough Council.
- The appeal was against the refusal of planning permission for the change of use of the building from a cattery to a cattery with associated residential unit.

Cattery at White Dyke Farm, Black Dyke Road, Hockwold cum Wilton, Norfolk IP26 4JW

Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. A pre-hearing note was issued to the main parties with various requests and timescales for the provision of additional information, to enable the hearing event to run efficiently. Both main parties responded to the relevant requests of them in a timely manner, however, the applicant was not originally copied into the Council's responses.
3. An application for the award of costs was submitted in writing, by the appellant, shortly before the hearing. The grounds for the award of costs were partly founded on the basis that the Council had been unco-operative through delays in providing information and failing to adhere to deadlines associated with the requests made in the pre-hearing note.
4. On review of the application for costs, it became apparent that the appellant had not viewed copies of the Council's responses to the pre-hearing note. Accordingly, relevant copies were then provided to the appellant (the day prior to the hearing). At the hearing, the appellant was also offered the opportunity for an adjournment to allow further consideration of the Council's submitted responses. As such, the Council did not act unreasonably with regards to this specific matter raised, nor do I consider that the appellant was prejudiced in the hearing proceedings.

The submissions for Mr John Scott

5. The costs application was submitted in writing.
6. A further rebuttal to the Council's response to the application for costs was made orally at the hearing. In summary, the appellant's rebuttal set out that the claims that the Council had been unco-operative through delays in providing information

and failing to adhere to deadlines were withdrawn. However, it was maintained that the Council had behaved unreasonably through preventing development that should clearly be permitted having regard to the development plan, national policy and material considerations. It was also maintained that the Council had acted unreasonably through not determining cases in a consistent manner, with reference to previous cases at White Dyke Farm and nearby sites.

7. It was also explained that the applicant had arrived at the hearing with what seemed to be a single issue of dispute to resolve, but instead the Council had changed its stance on the financial soundness of the cattery enterprise at the hearing. It was argued that this also amounted to unreasonable behaviour given that the issue could have been raised at the application stage or as part of the various other applications/appeals at the site.
8. On this basis, the applicant contends that an appeal should not have been necessary, or at the very least a hearing could have been avoided.

The response by King's Lynn and West Norfolk Borough Council

9. The response was made in writing, with copies provided at the hearing.

Reasons

10. 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.
11. The PPG further provides examples of the type of behaviours that may lead to an award of costs, this may include; 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; and not determining similar cases in a consistent manner.

Preventing or Delaying Development that Should Clearly be Permitted

12. The applicant still owned the Annexe building when the Council determined the planning application. The Annexe was therefore available, and despite being a separate building it was reasonable for the Council to consider it to have been capable of meeting the functional needs of the cattery business. Although the applicant indicated that the Annexe was in the process of being sold, no detailed evidence was submitted to demonstrate that an exchange of contracts had taken place when the planning application was being considered. The sale of the building was therefore not guaranteed. Indeed, the sale of the Annexe was only complete shortly before the appeal hearing took place.
13. The Council also suitably linked its reason for refusal to adopted development plan policy and national policy. I therefore do not consider that the Council acted unreasonably in refusing the application on the basis that alternative accommodation in the applicant's ownership/control could meet the needs of the cattery business.

Consistency in Decision Making

14. The Council has previously granted planning permission for other residential units at the wider White Dyke Farm site, despite its isolated location within the countryside. However, as indicated in my appeal decision, the permissions relating to the three barns and former cattery building on the wider site appear to be materially different in that they involved the conversion of historic buildings (seemingly curtilage listed). In respect of the conversion of the three barns, the appellant has also acknowledged that the permission was granted under a previous policy context. Given the contextual differences, I do not consider it has been demonstrated that the Council has taken an inconsistent approach in its determination of applications at the site or behaved unreasonably in this respect.
15. The Council only confirmed that it believed that the appeal should be refused based on the on-going financial soundness of the existing cattery enterprise at the hearing. The financial soundness of the business was not a reason for refusal on this application or previous planning applications/appeals in connection with the cattery. Nevertheless, it is pertinent that further financial evidence was submitted by the applicant as part of the current appeal process (to justify that the business could not sustain a mortgage on the White Dyke Farmhouse). Furthermore, the applicant highlighted through the Statement of Common Ground (SOCG) that the cattery enterprise was financially sound due to his personal circumstances. Given this additional evidence, I find it reasonable that the Council also began to question the prospects of the business remaining financially sound in the future, and its adherence to relevant adopted development plan policy.
16. It would have been helpful for the Council to have confirmed its final position on the financial soundness of the cattery in advance of the hearing. Still, my pre-hearing note established that main parties should be prepared to discuss this matter at the hearing. This is because the appeal evidence largely predicated that the financial soundness of the business was based on the applicant's personal circumstances, which was a matter of dispute between main parties (as set out in the SOCG).
17. There are also some contextual differences between the appeal proposal and the planning decisions at nearby Black Dyke Farm and Fountain Stables (as indicated in my appeal decision). I do not have the full background details of the decisions for those nearby sites referred to by the applicant. Nonetheless, the evidence presented by the applicant has not convinced me that the Council has taken an inconsistent approach, rather than considering each of the proposals on their specific merits. Furthermore, the local planning authority's decisions as to whether to take enforcement action against breaches of planning in the area, does not signify that the Council has been unreasonable in refusing the applicant's current proposal.

Summary and Conclusion

18. Based on the above, and the findings of my appeal decision, I do not consider that the Council has prevented or delayed development which should clearly be permitted. Nor do I consider it has been demonstrated that the Council has acted in an inconsistent manner in dealing with the current application, or that it has acted unreasonably during the course of the appeal by asserting that the proposal should be refused on alternative grounds.

19. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Lewis Condé

INSPECTOR