



Costs Decision

Hearing held on 6 February 2025

Site visit made on 6 February 2025

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

COSTS APPLICATION A

Costs application in relation to Appeal Ref: APP/K0235/W/24/3345789

Hill Farm, Melchbourne Road, Riseley, MK44 1BY

- 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 Scott Hodson for a full award of costs against Bedford Borough Council.
- The appeal was against the refusal of planning permission for an agricultural workers dwelling.

COSTS APPLICATION B

Costs application in relation to Appeal Ref: APP/K0235/W/24/3345789

Hill Farm, Melchbourne Road, Riseley, MK44 1BY

- 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 Bedford Borough Council for a full award of costs against Mr Scott Hodson.
 - The appeal was against the refusal of planning permission for an agricultural workers dwelling.
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Decisions

1. Costs Application A is refused.
2. Costs Application B is refused.

Procedural Matters

3. Parties in planning appeals normally meet their own expenses. The costs regime is intended to support a well-functioning appeal system and encourage proper use of the right of appeal. It is aimed at ensuring that all those involved in the appeal process behave in an acceptable way and are encouraged to follow good practice, whether in terms of timeliness or in quality of case.
4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party where: a party has behaved unreasonably, and; the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Both tests need to be met in order for an application for costs to succeed.

Costs Application A- Reasons

5. The applicant considers that the Council behaved unreasonably in the determination of the planning application in a number of ways, which I consider in turn below. While the appellant asks that I consider whether the Council's approach

to the application was acceptable, my considerations are nonetheless limited to the tests set out in the PPG above.

Consideration of matters beyond the scope of the application

6. The application was made in outline with all matters reserved except for access and scale. Matters relating to appearance, landscaping and layout were reserved for consideration at a later date. The applicant considers the Council's reasons for refusal nos. 4, 5 and 6, relating to ecology, foul drainage and waste disposal, went beyond the scope of what should be considered.
7. In determining the application it was necessary to assess the acceptability of the principle of the development. In the appeal decision I have disagreed with the Council on those issues as I consider that a suitable solution could reasonably be achieved. However, I see no reason why those matters should not have been considered at this outline stage given they relate to the acceptability of a residential dwelling on the site. The Council have commented that it did not consider the remaining reserved matters of appearance, landscaping and layout to be necessary for the application's determination and on that basis a notification as set out in the GDPO¹ was not required. Even if details of ecology, foul drainage and waste disposal did not form a validation requirement, this would not imply that those matters should not be considered, since the validation requirements are the minimum necessary for an application. Consideration of arrangements for waste is a requirement of the development plan.
8. There have been concerns from both parties during the course of the appeal regarding the nature of the development to which the appeal relates and I return to this matter below. Nonetheless, having regard to the Council's decision notice, the description of development on which it carried out public consultation and other associated documents, I am satisfied that the Council assessed and determined the application on the basis of the development for which the applicant applied.

Application Process

9. A number of concerns are raised for the way in which the application was determined. This began with delays in the validation process, which it would appear the Council communicated with the appellant at the time and an extension of time (EOT) was agreed. The Council's website provides a list of circumstances when an EOT may be used, however this is not a closed list. While unfortunate, this would not appear to have amounted to a significant delay in the determination of the application and the Council have commented that it issued the decision a week before the agreed target date. I do not find the Council's behaviour in that regard to have been unreasonable and, even if the application had been determined sooner, it is unlikely that the need for the appeal would have been avoided altogether.
10. Concerns have been raised for the ability of planning officers to assess the applicant's Functional and Financial Need Appraisal (the FFNA). I am not aware of a requirement for an agricultural specialist to review such information and the role of the Council is ultimately to consider the proposal in light of the development plan and other considerations. The Council have stated that it was not expedient to employ a consultant on this particular case and I am satisfied that the Officer Report included an adequate analysis of that document in light of the relevant local

¹ The Planning (General Development Procedure) (England) Order 2015

plan policies. I do not, therefore, find the Council's assessment of the application to have been inadequate in that respect.

11. There is dispute as to whether the Council's Policy Team assessed the FFNA and I have seen comments from that team dated 17 November 2023. Those comments refer to the FFNA and are dated after the applicant rectified problems with the document. The policy team consultation response contained the caveat that they do not constitute an evaluation of all relevant policies and considerations and the FFNA was, in any event, considered at length in the Officer's Report. As such I am satisfied that the Council had due regard to the document in reaching its decision.
12. The applicant has evidenced that the Council delayed the uploading of the highways consultation response to its website and it is not clear why that was the case. Although this would have been alarming, it does not suggest an error in the Council's assessment of the planning application, or that a different decision would have been reached if this had not occurred.
13. Where there is disagreement surrounding parts of the Council's assessment, this was a matter of judgement for the decision maker. The Officer's Report acknowledges the grant of planning permission for a dwelling on the site in 2010 and it was discussed in the hearing that it related to a different individual and a different set of circumstances. It is therefore not clear that it should have resulted in a different decision. With regard to a fall-back position relating to the use of the access, the Officers Report shows the Council took account of the introduction of other uses which would not have required planning permission and again while there were differences of opinions between specialists on this matter, this did not amount to unreasonable behaviour. There is not detailed evidence of inaccuracies in the Officer's Report or how their omission would have resulted in a different decision, or remove the need for the appeal.

Behaviour of Officers

14. The serious allegations in respect of officer behaviour are best addressed to the Council. In terms of communication, including whether to notify the applicants of the Officer's recommendation prior to decision, those are similarly matters for the Council's internal processes and procedures. It is also not my place to comment on the suitability of the officer's working arrangements. However the Council have evidenced a chain of many emails exchanged during the application which included submissions by the applicant in response to some of the consultee comments, including an additional highways note. It would appear that consultation responses were also made available online for the appellant to view throughout the process. The Council's behaviour cannot therefore be described as unreasonable in that respect.
15. In addition, the Council have highlighted that it offers a pre-application advice service as a means to help iron out issues prior to the submission of planning applications and its website details the approach that will be taken to negotiation once an application is submitted. While the applicants have doubts surrounding the quality of that service, it was nonetheless an option available to them and is the approach supported by the Framework and the PPG to improve the likelihood of success. I can appreciate that the appellant has had difficulties obtaining favourable decisions on other proposals on the site, however, this does not in itself demonstrate that unreasonable behaviour has occurred.

Costs Application A- Conclusion

16. Having regard to all matters raised, while the outcome of the planning application was not as the applicant would have wished, unreasonable behaviour which resulted in wasted or unnecessary expense in the appeal process, as described in the PPG, has not been demonstrated. Costs Application A is therefore refused.

Costs Application B- Reasons

17. The Council consider the appellants behaved unreasonably during the appeal process, in particular relating to the late submission of documents, failure to agree a Statement of Common Ground (SOCG) and as the Council consider the appeal had no reasonable prospect of succeeding.

Missing Information

18. The appellants accept that certain documents, which they relied on as part of their case, were not submitted to the Council at the time the appeal was made. The submission to the Council included only the appeal form and appeal statement, and did not include, for example, the Savills Report, BNG metric, or additional transport statement. The Procedural Guide for planning appeals is clear that appellants must send a copy of the appeal form and supporting documents to the Planning Inspectorate and to the Local Planning Authority, and an example of unreasonable behaviour by an appellant listed in the PPG includes a delay in providing information or other failure to adhere to deadlines. While those missing documents were referred to in the Appeal Statement, and irrespective of whether they were going to be accepted by an Inspector in due course, it was the responsibility of the appellant to ensure they were sent to the Council.
19. The email chains provided show a copy of the missing Savills Report was provided on the day it was requested by the Council. I understand, however, that the Council did not receive or have sight of the additional transport statement and BNG Metric until 2 December, nearly six months after the appeal was submitted. This constituted unreasonable behaviour by the appellant as non-compliance with a procedural requirement.
20. Nonetheless, given the change of procedure for the appeal, both main parties were given the opportunity to add to their statements by 10 December 2024. This process allowed for the Council to submit comments in writing on all the documents, and it is not apparent that there was unnecessary or wasted expense incurred by the Council despite the lateness of the documents.
21. Notwithstanding the Council's costs application, it was discussed in the hearing that the Savills Report which had been provided to the Council lacked several pages including its conclusion and appendices. While I do not doubt this occurred again in error, it was the second time that the Council were not in receipt of all the relevant appeal documents. This matter caused disruption to the proceedings as the hearing needed to remain open to allow the submission of comments on those missing parts of the document. However, given the nature of the missing sections, I consider the additional time required after the hearing was within the reasonable parameters of the Council responding to the appeal.

22. On balance, for the reasons given, the unreasonable behaviour by the appellant did not give rise to wasted or unnecessary expense to the Council in the appeal process.

Statement of Common Ground (SoCG)

23. The PPG includes 'not completing a timely statement of common ground or not agreeing factual matters common to both principal parties' as an example of unreasonable behaviour by appellants. The main parties failed to agree a SoCG before the hearing and there was clearly a difference of opinion in how this should be achieved. Based on what I have seen, the appellants draft SoCG did not adhere to the online guidance, which states that it should contain statements about the appeal proposal that the appellant reasonably considers will not be disputed by the local planning authority. The document did not need to go beyond this requirement. The evidence suggests that the Council responded to the appellant's draft SoCG the day after it was received and that its tracked changes on the document were substantial and then heavily contested by the appellant. I understand the appellant did not engage after the Council's comments to seek to agree the document, and this amounted to unreasonable behaviour.
24. Despite this, I am mindful that the parties were only recommended to provide a SoCG in the weeks preceding the hearing, limiting the amount of time available to agree the document. While an agreed SoCG would have been useful, it is not apparent that its absence elongated the process or resulted in wasted or unnecessary expense in the appeal process considered as a whole.

Prospect of Success

25. As similarly raised by the appellant in their costs application, there was confusion surrounding the nature of the development for which permission was sought. This arose from discrepancies among the application and appeal documents, where the descriptions of the proposed development were at odds with the development set out on the application form. This matter resulted in additional emails and time spent by both parties during the course of the appeal and the Council adopted a precautionary approach in also considering the provision of a temporary structure as part of their assessment.
26. While the Council may consider the appeal had no prospect of success on that basis, the appellant confirmed that it was the development on the application form which was correct and on which the appeal should proceed. The appeal was not withdrawn and could not therefore have been avoided. Given the development for which planning permission was sought was capable of being assessed against the relevant development policies and its compliance was a matter of judgement, I do not find that the appeal had no prospect of success.
27. While this matter caused frustration throughout the process to both main parties, given the application form was the overriding consideration, and as this was not disputed by the appellant, I do not find this constituted unreasonable behaviour which caused unnecessary or wasted expense in the appeal process.

Costs Application B- Conclusion

28. For the reasons given, unreasonable behaviour was displayed by the appellant during the course of the appeal. However, it has not been demonstrated that this

caused wasted or necessary expense in the appeal. Costs Application B is therefore refused.

29. I note the Council alternatively seek a partial award of costs relating to the time spent since the submission of the Council's Statement of Case, where the discrepancy regarding the nature of the proposal was highlighted. Nonetheless, as discussed above and as the appeal was able to proceed, I do not find that matter would amount to reason for an award of costs under the provisions of the PPG.

C Shearing

INSPECTOR