



Costs Decision

Hearing (Virtual) held on 18 March 2025

Site visit made on 19 March 2025

by **Hannah Guest BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2025

Costs application in relation to Appeal Ref: APP/H1840/W/24/3356998

Mearse Croft Farm, Mearse Lane, Inkberrow, Worcestershire, B96 6LN

- 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 Mark Edwards for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of an application to grant planning permission for agricultural buildings, including grain silos, chicken sheds and movable hen houses without complying with a condition attached to planning permission Ref 21/02986/FUL, dated 18 May 2022.
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Decision

1. The application for an award of costs is allowed 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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The PPG sets out what type of behaviour may give rise to a substantive award of costs against a local planning authority. This includes imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework (the Framework) on planning conditions and obligations.
4. The applicant claims that the Council has acted unreasonably by maintaining that the disputed condition, as it is worded, meets the tests set out at Paragraph 57 of the Framework and the associated advice set out in the PPG. The applicant considers this to have resulted in unnecessary and avoidable expense. The applicant refers to multiple examples of unreasonable behaviour relating to both procedural and substantive matters.
5. The Planning Statement¹, submitted as part of the application subject of this appeal, set out why the applicant considered the disputed condition to be

¹ Planning Statement Removal of Condition 3 of Application Reference 21/02986/FUL, Mearse croft Farm, Mearse Lane, Inkberrow, Worcestershire, B96 6LN, dated February 2024, Document Reference: 3367, prepared by Planview Planning Ltd.

- unreasonable and not to meet the tests set out at paragraph 57 of the Framework. This was centred on the agent of change principle set out in Paragraph 200 of the Framework, but also included the wording of the condition, and the financial implications of the required noise mitigation and the consequences of a breach.
6. In this case, the Council misapplied the agent of change principle, and although the application of policy can be a matter of interpretation, there does not appear to be a reasonable basis in this instance. The Council's position regarding whether it was aware of the generator on the appeal site evolved during the appeal. Subsequently its reasoning for why the live/work unit would not be the agent of change with regards to the generator was continuously tweaked to support its position.
 7. Paragraph 200 of the Framework refers to the 'agent of change' as development permitted after an existing business was established. As set out in my decision on the appeal, whether fixed or mobile, formally permitted or not, the generator was an established part of the sheep and poultry enterprise, and its impact should have been included within the scope of the assessment relating to the application for the live/work unit.
 8. While the Council maintain that an on-site assessment was undertaken of the impacts of the sheep and poultry enterprise on the live/work unit, the officer report prepared on the live/work unit, which outlines the Council thinking at the time the live/work unit was assessed, does not consider the impact of any neighbouring land uses on the live/work unit. It only assesses the impact of the live/work unit and there is no mention of the adjacent enterprise.
 9. Likewise, what is evident in the Council's officer report on the application subject to the appeal is that, although it concluded the disputed condition to be reasonable in all other respects, other than the agent of change principle, many of the issues raised in the Planning Statement were not formally assessed. Nevertheless, the Council subsequently accepted at the hearing that some of these issues would make the disputed condition unreasonable.
 10. As set out in my decision on the appeal, the Council accepted at the hearing that the consequence to not use any of the structures permitted as part of the appeal scheme in the event of a breach of the disputed condition was unreasonable and that this consequence, despite not materialising in practice in this case, would place an unjustifiable and disproportionate financial burden on the appellant.
 11. Mr Steve Williams, on behalf of the Council, also accepted at the hearing that the level of noise required by the disputed condition should have been based on the level of noise reaching the receptor. The Council's assertion that the level of noise needed to be inaudible on the north-western boundary to protect future occupants of the live/work unit was based on land ownership rather than an objective analysis.
 12. Overall, I consider the Council to have misunderstood the rationale behind the application subject of the appeal, to the detriment of their assessment and determination. In the email evidence provided by the Council relating to its own application for costs, the planning officer provides the applicant the opportunity to submit a full noise assessment of the generator and states that without this key information they would not feel confident that granting permission to remove the disputed condition would provide benefits that would significantly and demonstrably outweigh the harm to residential amenity resulting from the proposals. However,

the applicant's case for removing the disputed condition did not argue that noise was not an issue, which demonstrates a misunderstanding.

13. It appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the disputed condition should reasonably have been removed, and the Council should not have refused the application subject of the appeal. This constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG. As a result, the appellant has been faced with the unnecessary expense of lodging, preparing for and attending the appeal.
14. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated to have occurred and a full award of costs is therefore warranted.
15. For completeness, several other points have been raised by the appellant as part of this cost application and responded to by the Council, Nonetheless, given the conclusion above, there was no need for me to consider these points further.

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 Wychavon District Council shall pay Mr Mark Edwards the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Wychavon District Council whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

Hannah Guest

INSPECTOR