



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 Wychavon District Council for a full award of costs against Mr Mark Edwards.
 - 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 refused.

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 Council contends that the applicant acted unreasonably for several reasons and considers that there were viable options available to achieve removal of the disputed condition, which would have avoided the need for an appeal.
4. It is the Council's view that the applicant could have supplied a noise survey and noise attenuation scheme as part of the application to remove or discharge the condition. By failing to provide this information during the application process, the Council consider the applicant failed to engage proactively and transparently.
5. It is important to recognise that the application subject to the appeal sought to remove the disputed condition by demonstrating that it did not meet the tests set out at Paragraph 57 of the National Planning Policy Framework (the Framework). The application was not seeking a variation of the disputed condition nor was it looking to discharge it. The applicant has not behave unreasonably by not choosing these courses of action.
6. I acknowledge that the applicant made an application to discharge the disputed condition after the application subject to this appeal had been refused. The application to discharge the condition was supported by a noise survey and

- proposed noise attenuation scheme. There was no disagreement between the parties at the hearing that this application was made solely to avoid the Council serving a further Breach of Condition Notice.
7. Furthermore, despite the assertions of the Council, it is not common practice to remove a condition as a result of compliance. In this case, removing the condition after compliance would make it difficult for the Council to require the retention and maintenance of the noise attenuation scheme on an ongoing basis.
 8. The email evidence provided by the Council shows the applicant's agent was both proactive and transparent during the application process. The agent was keen to discuss the application with the Council as he was concerned that the rationale behind the application had been misunderstood. From the Council's response and subsequent assessment of the application set out in its officer report, the agent's concerns appear valid.
 9. The applicant's case included several potential shortcomings of the disputed condition but centred on the misapplication of the agent of change principle set out at Paragraph 200 of the Framework and that making the generator inaudible was unattainable. The applicant's case for removing the disputed condition did not argue that noise was not an issue. The submission of a noise survey to demonstrate whether noise mitigation measures are required was therefore not relevant to the applicant's case. It is possible and was demonstrated by the Council's responses at the hearing, for a condition to be necessary but not reasonable in all other respects. Following consideration of the application on its merits alone I have come to a similar conclusion.
 10. The Noise Survey prepared to support the application to discharge the disputed condition, is dated November 2024. It is therefore evident that the applicant's agent was not withholding necessary information during the application process, as the Noise Survey had not been undertaken at this point in time.
 11. The Council contends that the time taken to construct the approved noise mitigation scheme, which consists of a generator cover, a lack of information regarding the use of any contractors and missing metadata from photographs demonstrates that the appellant was withholding evidence throughout the planning process. However, these allegations are based on conjecture at best. Having previously been served a Breach of Condition Notice, it is only natural that the applicant would want to install the generator cover as quickly as possible to avoid a further notice being served. It was confirmed during the hearing that the applicant had installed the generator cover himself by taking time out of the sheep and poultry business and that the cover is still not fully complete. There is nothing before me to demonstrate otherwise.
 12. In any event, all the information submitted with the application to discharge the disputed condition, including the noise survey and the plans and photos of the partially completed generator cover were introduced at appeal by the Council and were not relied upon by the applicant as part of his case.
 13. The partial discharging of the disputed condition formed part of the Council's case to justify why the condition could not be considered unreasonable. As set out in my decision letter on the appeal, there is nothing before me to suggest that it would not be possible to discharge an unreasonable condition. It is also important to recognise that the disputed condition would not have been partially discharged

- without clarification from Worcestershire Regulatory Services regarding the meaning of 'inaudible' for the purposes of the condition. Thus, the partial discharging of the disputed condition would not have avoided an appeal.
14. It is also the Council's view that the applicant could have supplied information pertaining to his financial situation as part of the application process to justify why the disputed condition would be an unjustifiable and disproportionate financial burden. By choosing to only supply relevant information to demonstrate this at the appeal the Council consider the applicant to have behaved unreasonably.
 15. I appreciate that additional information was provided on this point as part of the appeal process. Nonetheless, it appears that this information sought to address issues raised in the officer's report, which the applicant would only have been aware of after the application subject to the appeal had been refused. There is nothing before me to demonstrate that the Council requested additional financial information during the application process. Furthermore, paragraph 48 of the applicant's Planning Statement, which was submitted as part of the application subject of the appeal, clearly sets out how a breach of the disputed condition would force the business to cease operations. Thus, place an unjustifiable and disproportionate financial burden on the applicant.
 16. In the email evidence provided by the Council, 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. Therefore, while the additional financial information provided as part of the appeal may have helped the Council with its assessment of the application, I consider that an appeal could not have been avoided. The amount of additional information provided was reasonably modest and unlikely to result in an appreciable amount of additional preparatory work. Also, there is no substantive evidence before me that the Council incurred any additional expense in the appeal process as a result.
 17. For the reasons set out above, I conclude that it has not been demonstrated that the applicant failed to co-operate with the Council, nor that he deliberately concealed relevant information and only supplied it at appeal by introducing fresh and substantial evidence. It has also not been demonstrated that this has resulted in an appeal which would have not otherwise been necessary. Furthermore, there is no evidence of any unnecessary or wasted expense in the appeal process. Given this, and having regard to all other matters raised, an award of costs is therefore not justified.

Hannah Guest

INSPECTOR