

Costs Decision

Site visit made on 26 July 2016

by **S D Harley BSc(Hons) MPhil MRTPI ARICS**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 August 2016

Costs application in relation to Appeal Ref: APP/X1925/W/15/3132622 The Barn, Sootfield Green, Charlton Road, Preston, Herts SG4 7TB

- 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 Jeremy Ward, JWIBC for a full or partial award of costs against North Hertfordshire District Council.
 - The appeal was against the refusal of prior approval by the Council for change of use of agricultural barn to one 2 bedroom dwelling and external alterations involving the insertion of windows and doors.
 - This decision supersedes that issued on 21 December 2015. That decision on the appeal and the associated costs decision was quashed by order of the High Court
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) says that irrespective of the outcome of the appeal, costs may only 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 Council refused application Ref 15/00005/1PN (the second application) for three reasons. The applicant considers that the Council behaved unreasonably in relation to each reason for refusal and also by acting inconsistently in not raising all of these reasons for refusal in relation to an earlier similar application for prior approval on the site Ref 14/02259/1PN (the first application).

Reason for refusal 1

4. The applicant considers the Council misapplied the relevant legal principles for construing planning conditions to the extent that the wording of condition 3 attached to planning permission Ref 10/02253/1 could not be construed as preventing the use of permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO).
 5. Without repeating all the arguments of the appeal decision I have concluded that Condition 3 of the earlier permission does operate to prevent the proposal being permitted development under the GPDO. Accordingly I do not consider the Council acted unreasonably in construing the relevant legislation in this way.
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Reason for refusal 2

6. The applicant considers the Council should not have taken account of the sustainability of the site location as a relevant consideration in deciding whether prior approval should be granted or not. Moreover, the legislation does not allow approval to be withheld on the grounds of the site being too small to provide waste storage, car parking, private amenity space and access (other than highway and transport issues); the perceived problem of flooding of the road access could be easily rectified. Accordingly the Council should not have refused the application for these reasons. If these grounds were of justifiable concern planning conditions could have been utilised.
7. The Council says that the PPG was updated to make it clear that sustainability of location does not apply in prior approval cases but this was after the decision on the second application was issued. In its Statement of Case the Council withdrew the sustainability reason for refusal. This was not unreasonable behaviour in the appeal process.
8. The Council remains of the view that the proposed change of use would be impractical and undesirable due to its concerns about the size of the site in relation to waste storage, car parking, private amenity space and the access arrangements but recognises that the restricted curtilage is due to the GPDO requirement for the curtilage to be no larger than the floor area of the building. The GPDO and the PPG list the matters that can be considered in deciding an application for prior approval under the Schedule 2 Part 3 Class Q of the GPDO (Class Q).
9. The relevant considerations in the GPDO do not directly specify requirements relating to waste storage, car parking, private amenity space or to showing the access within the application site. The amount of space within the curtilage is not an example identified in the PPG as a characteristic of an impractical and undesirable location. However, even if refusing the proposal on this basis amounted to unreasonable behaviour by the Council, on the balance of probabilities it seems unlikely that separate expense would be identifiable or capable of being quantified in this respect. Accordingly I do not consider that unreasonable behaviour resulting in unnecessary expense in the appeal process, as identified in the PPG, has been demonstrated in this respect.
10. Transport, highway impacts and flooding risk are matters which can be considered under Class Q. The Council considers the localised flooding of the highway/entrance was a matter outside the site boundary and of low priority to the Highway Authority. The Council now agrees that, in the event that approval were granted, a condition might be appropriate. The Council were however refusing the application for other reasons and in such circumstances the option of a condition would not be available. Reflecting the concerns in a reason for refusal therefore enables the applicant to take these matters into account in considering future courses of action. This was not unreasonable behaviour on the part of the Council.

Reason for refusal 3

11. The applicant considers the Council should have given him the opportunity to provide information on bat habitats before refusing the application or alternatively could have used a planning condition to address the matter. As set out in my appeal decision the Council is required to consider protected

habitats and species in exercising their planning functions. In the case of proposed works to a barn it is not unreasonable to suppose that bats or their habitats might be affected and it is expected that surveys should normally be carried out before permission is granted. Moreover, the Council has a time scale of 56 days under Schedule 2 Part 3 Class W (11)(c) of the GPDO within which to notify the applicant of its decision. If the Council has not notified the applicant within this time the development may begin. Under such a time constraint it was not unreasonable for the Council to address the matter by a reason for refusal rather than giving the opportunity for the applicant to provide a bats assessment and as set out above there was another substantive reason for refusing the application. Even if this could be construed as unreasonable behaviour, the requirement to carry out the assessment remains. Therefore on the balance of probabilities unnecessary or wasted expense in the appeal process has not been incurred in this respect.

Inconsistency

12. Finally the applicant considers the Council should not have raised new reasons for refusal for the second application that were not raised in the first application. From the evidence before me there appears to be no substantive difference between the proposals of the first and second applications other than the smaller curtilage, particularly in respect of whether the proposal is permitted development or not. It seems likely that the applicant would have been surprised by the additional reasons for refusal. I consider that the Council behaved unreasonably in this respect and caused the applicant unnecessary costs in relation to the first reason for refusal as set out above.

Costs Order

13. 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 North Hertfordshire District Council shall pay to Mr Jeremy Ward, JWIBC the costs of in relation to the first reason for refusal in the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to North Hertfordshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

SDHarley

INSPECTOR