



---

## Costs Decisions

Hearing Held on 16 May 2018

Site visit made on 15 and 16 May 2018

**by Andrew McGlone BSc MCD MRTPI**

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

**Decision date: 25 June 2018**

---

### **Costs application (a) in relation to Appeal Ref: APP/L3245/W/17/3188617 Barn adjacent The Cottage, Lee, Ellesmere SY12 9AE**

- 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 Ben Pocock of Dukescroft Limited for a full award of costs against Shropshire Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a single detached dwelling together with ancillary works.
- 

### **Costs application (b) in relation to Appeal Ref: APP/L3245/W/17/3189268 Barn adjacent The Cottage, Lee, Ellesmere SY12 9AE**

- 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 Ben Pocock of Dukescroft Limited for a full award of costs against Shropshire Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of agricultural land to residential use, construction of two bay carport/garage, realignment of existing track, reuse of outbuilding as garden store, installation of additional cladding and external flue on existing barn, all to be used in connection with permitted barn conversion.
- 

### **Costs application (c) in relation to Appeal Ref: APP/L3245/W/18/3194193 Barn adjacent The Cottage, Lee, Ellesmere SY12 9AE**

- 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 Ben Pocock of Dukescroft Limited for a full award of costs against Shropshire Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a single detached dwelling together with ancillary works.
- 

## Decisions

1. Applications (a), (b) and (c) for an award of costs are refused.

## Reasons

2. The Planning Practice Guidance (the Guidance) 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. The Guidance sets out the circumstances in which a local planning authority's handling of the planning application prior to appeal may lead to an award of costs. Parties in the appeal process are normally expected

- to meet their own expenses, and costs may not be claimed for the period during the determination of the planning application. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order to be successful.
3. The applicant's applications and the response of Shropshire Council were both submitted in writing. At the Hearing, both parties made several further points orally. I have had regard to these in reaching my decision on the costs applications. The Council submitted printed copies of a raft of email correspondence between the parties. The applicant considers that the Council has acted unreasonably on a procedural and substantive basis.
  4. For ease of reference and consistency with my decision, I shall refer to costs application (a) as Appeal A; costs application (b) as Appeal B; and costs application (c) as Appeal C. The applicant provided a table in support of their costs applications. Although this identifies the alleged source of unreasonable behaviour, in respect of each appeal, the applicant states that they are seeking "*all costs associated with the application/appeal preparation, submission and hearing.*" It is also clear that many of the alleged aspects of the Council's unreasonable behaviour do, in fact, transverse the three appeals. While, it is not common that three appeals are linked, I have considered the applications on this basis.

#### *Procedural matters*

5. The applicant submits that the Council has behaved unreasonably by: not co-operating with the applicant and by refusing to provide reasonably requested information; subsequently withdrawn a reason for refusal; provided information that has been shown to be manifestly inaccurate or untrue; and that a procedural error with determination of application could have led to a different method of determination.
6. Lengthy email correspondence spanning over two years were submitted by the Council at the hearing. I was not informed of their relevance or of particular emails that support a point the Council made in their rebuttal to the costs applications. Based on the applicant's submission that the Council has not co-operated with them, and reference to paragraph 187 off the National Planning Policy Framework (the Framework), I have taken them to relate to the Council's response on this matter.
7. Framework paragraph 187 states: "*Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.*"
8. Phone records provided by the applicant show that regular efforts have been made to contact the Council throughout the lifetime of each appeal. They do not, however, detail what was said or discussed. I do not have details of any phone calls that the Council may have made before me. Applications relating to this site appear to have involved multiple Council officers. There does also seem to be, based on the information before me, a potential lack of communication or the involvement of too many officers across the piece, which

- has resulted in the applicant feeling frustrated with the quality of responses to their enquiries on how the applications were progressing and what the Council's concerns were at times. The number of officers involved also led to various professional opinions being expressed. This was evident at the hearing, and it wasn't always helpful.
9. It is unfortunate that the applicant wasn't seemingly given an opportunity to withdraw their proposals or make further changes, but the Council does have a responsibility to determine applications in a timely manner. Notwithstanding Framework paragraph 187, applications should not be kept open in perpetuity.
  10. However, email correspondence provided by the Council shows that a fair amount of dialogue about the site has taken place over the last two years or so, and confirm that the parties have also met in person. The disputed issues have narrowed over time, and while I consider the Council could, at times, potentially have handled the applications before them better, on the whole across the three appeals, on balance, I consider that they have acted within the spirit of Framework paragraph 187.
  11. I note the applicant's points that draw out aspects of the Council's case in respect of infill, but the Council did not withdraw their concerns about this matter. Similarly, the Council defended the second reason for refusal (Appeal A) on a number of grounds. From the Council's evidence and from what I heard at the hearing the Council did not concede this ground. They did also adequately explain what their concerns were, even if I did not agree with them. Thus, no wasted or unnecessary expense has therefore been incurred by the applicant in this regard.
  12. The applicant submits that the application subject of Appeal A should have been determined by the Council's Planning Committee, having regard to the Council's Scheme of Delegation. Whether the application should or should not have been considered by the Planning Committee is not a matter for me. It is also not for me to guess how the Planning Committee may or may not have dealt with the application if it had been put before them. There is no certainty that the Planning Committee would have found in the applicant's favour or that it would have avoided the appeal before me, given that there was more than one reason for refusal. If the applicant is unhappy with how the Council handled the application, then they need to raise this directly with the Council in the first instance, and secondly through the Local Government and Social Care Ombudsman if they are unhappy with the Council's response. This procedural aspect of the costs applications falls outside of the appeal process, and it has not been clearly demonstrated that Appeal A would not have been needed.
  13. The officer reports related to the planning applications subject of Appeals A and C incorrectly set out the remit of the certificate of lawful development (LDC)<sup>1</sup>. Although the applicant submits that this consideration of the cases may have affected the Council's decision making, and thereby avoided the need for the appeals, these proposals also turned on the site's location and the effect of Appeal A on the character and appearance of the area. The LDC did not seem to affect the Council's assessment of these matters.
  14. My attention has been drawn to audio transcripts and recordings of the Planning Committee meeting on 9 January 2018 which relate to the scheme

---

<sup>1</sup> Ref: 16/03788/CPL

subject of Appeal C. I note the content of the transcript, particularly the highlighted part. The sources of the various voices I heard in the recording is unclear, and I am not certain that the recording reflects the full discussion on the item, but it provides some context at least. The discussion I did hear centred on the LDC and the prior approval considered by the Council under Schedule 1, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the change of use from agricultural to residential use<sup>2</sup> (the prior approval scheme).

15. Despite the merits of the points made in the recording, it is important to bear in mind what was applied for by the applicant. This was set out in the Planning, Design and Access Statement (PDAS) states that "*the planning application has been made in part retrospectively following alleged unlawful works that were carried out as part of the conversion of a dutch barn which was to be converted into a dwelling under Permitted Development rights. The alleged unlawful works were stated to be tantamount to the erection of a new building.*" It continues to say that "the application has been made on the basis that the works are not conversion (in the opinion of the LPA)." I am mindful of the applicant's stance on the extent of the works, the prior approval scheme and the LDC.
16. Without prejudice to either parties view, given the PDAS, the Council at the committee meeting seem to have strayed from what ought to have been the central issue at hand, namely whether the scheme was within Lee and the development was on an infill site. Although the Council's reason for refusal confirmed their view that the site was in the open countryside and thus not within Lee, the reason for refusal (Appeal C) specifically references "*neither an infill site or a conversion*". While the applicant did not agree with the Council's principal stance about conversion, their application and the appeal was only advanced on the basis of it being an infill site. Points made by the Council may well have led the applicant to incur additional expenses in defending their case at appeal, but I am not convinced that these would be any different to those associated with presenting their case for Appeal B. It is also unclear whether the Planning Committee would have made a different decision, as I am not certain that the full extent of their discussions is before me.

#### *Substantive matters*

17. On substantive matters, the applicant submits that the Council has behaved unreasonably by: making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and an unsubstantiated reason for refusal; refused planning permission on a planning ground capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead; prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and acting contrary to, or not following, well-established case law; failed to produce evidence to substantiate each reason for refusal on appeal; and not determined similar cases in a consistent manner in accordance with well-established case law. Furthermore, they consider that the application and appeals could have been avoided by due regard being given the LDC; and that Council officers have failed to act objectively without personal opinions prejudicing their judgement.

---

<sup>2</sup> Ref: 15/02591/PMBPA

18. Central to both Appeals A and C were the parties views on whether the site was in the settlement of Lee, and whether the schemes advanced were infill development. Considerable evidence was put to me in writing and at the hearing. Despite my findings, this does not mean that one parties view comprised of vague, generalised or inaccurate assertions that was unsupported by objective evidence. I was referred to other sites and cases by both parties, but in the end the issues warranted a site specific judgement to be made. This approach is needed due to the way policies in the development plan are phrased; the lack of any definition of what infill is; and as a result of case law. While, the main parties disagreed, and I acknowledge the Council's views evolved over time, I do not consider that the Council has acted unreasonably in advancing their case, as it essentially a planning judgement. They did respond on face value to the evolution of the respective appeals and the evidence available to support their view.
19. Concessions were made by the Council in relation to the effect of the proposed curtilage on the character and appearance of the area. So much so that they did not advance this as a reason for refusal in Appeal C. Given this stance, the Council had enough opportunity before the hearing to reflect their position in respect of the curtilage, insofar as Appeal B. When questioned at the hearing they accepted that this concern falls away. Although the Council could have acted earlier, the appellant was aware of the Council's stance on the scheme subject of Appeal C, and as a result, this ought to have provided comfort and avoided unnecessary work. Aside to this, the Council's behaviour does not extend to their consideration of the planning application which relates to Appeal B as it was determined prior to the scheme subject of Appeal C. Nor does it relate to an earlier planning application<sup>3</sup> considered by the Council as this case was before any of the appeals, and changes made by the applicant to the various schemes with a view to finding a solution.
20. However, the Council did pursue an argument that the LDC only applied to an agricultural use. While, I understand at the time of their submission the applicant confirmed the building was in lawful agricultural use, the LDC issued by the Council did not confine it to agriculture. Thus, it ought to have been properly taken into account. However, it was not the Council's sole concern with this scheme. Even though I have not agreed with the Council on the associated development's effect on the character and appearance of the area, and the Council did not pursue their concerns at appeal in relation to the curtilage, these matters all required judgements to be reached.
21. I acknowledge that the applicant sought legal opinion on a number of matters stemming from the Council's evidence. However, I am not convinced that in doing so, it has not resulted in unnecessary appeals or wasted expense above and beyond what is normally expected by parties involved in the process, especially given the issues at hand.
22. Having regard to the evidence before me in respect of the three appeals, I do not agree with the applicant that each case was clearly compliant with the development plan. Each case required a planning judgement to be exercised having regards to the site's specific circumstances. I note points about a development boundary, but the Council came to their own reasoned opinion on Lee, noting that it was an assessment for the decision maker, and they did recognise that only Tetchill has a development boundary. Furthermore, the

---

<sup>3</sup> Council Application Ref: 17/00368/FUL

applicant's suggested use of planning conditions preventing any works related to the garage and garden from starting until the scheme subject of the prior approval was brought into residential use, would not have made that scheme acceptable given the Council's concerns about the garage.

23. The Council officer concerned does not recall saying the comments referred to by the applicant. If true, they would be personal opinions. Even so, there is no proof that they were actually made, given that they took place within a meeting of which I have no record of. Thus, the applicant has not clearly demonstrated unreasonable behaviour in this respect.

**Conclusion**

24. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

*Andrew McGlone*

INSPECTOR