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## Costs Decision

Hearing Held on 2 November 2022

Site visit made on 3 November 2022

**by S D Castle BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

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**Appeal Ref: APP/L3245/W/22/3301729**

**Haw Green Farm, Haw Green Lane, Peplow TF9 3LA**

- 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 T Heal (Heal Eggs Ltd) 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 siting of a single caravan for use as a temporary agricultural workers' dwelling.
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### Decision

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

### Reasons

2. The Planning Practice Guidance (the Guidance) states that, irrespective of the outcome of the appeal, an award of costs may be made where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural or it can relate to the substance of the matters under consideration as part of the appeal.
3. The Guidance<sup>1</sup> provides examples of behaviours that risk an award of costs, including, amongst others: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal; not determining similar cases in a consistent manner; and persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.<sup>2</sup>
4. The applicant asserts that, by refusing permission inconsistently with strongly relevant material considerations, the Council has acted unreasonably in relation to the substantive issues of the appeal. In particular, the applicant contends that the Council has acted unreasonably in objecting to the development given an Inspector recently found materially similar proposals at Coolmoor Farm<sup>3</sup>, and at The Hazles Farm<sup>4</sup>, to be acceptable. Those appeals were allowed in July 2020, prior to the Council issuing its decision for the current proposals in February 2022. The applicant, during the planning application process,

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<sup>1</sup> PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

<sup>3</sup> APP/L3245/W/20/3247409

<sup>4</sup> APP/L3245/W/20/3247412

highlighted to the Council the significant materiality of those recent appeal decisions to the assessment of the current proposal.

5. I have found that the circumstances of the recent appeals were substantially comparable to those for the current proposals given they all relate to large modern poultry units with alarm systems that cover potential failures in the units' automated ventilation, lighting, power, feed and water systems. As such, the issues relating to bird welfare and productivity in the recent appeals were similar to this appeal.
6. In the recent appeal decisions, despite the highly automated functioning of the modern poultry units, the Inspector found that it was necessary for a dwelling to be within sight and sound of the egg laying units in order to deal with potential bird welfare issues. As such, these appeals were allowed due to the essential need for the temporary agricultural workers' dwellings having been demonstrated given there was no available alternative accommodation.
7. Consistency in decision making is important. It was, therefore, imperative that in reaching its decision, the Council clearly demonstrated due consideration had been given to the findings of the Inspector as set out in the recent appeal decisions. Furthermore, considering the clear similarities between the recent appeal decisions and the current appeal, it was essential the Council provided clear reasons for not following the relevant findings of the recent appeal decisions. However, whilst the Council's Officer Report acknowledges the findings of the recent appeal decisions, there is no substantive assessment of the weight that should be given to those appeal decisions in the Officer Report.
8. The failure to substantively assess the weight to be given to those recent appeal decisions persists into the Council's appeal statement. Considering the material similarities between the appeals in terms of the need for the near constant and close monitoring of stock, the need for swift response times to issues, the requirement for additional labour, and the lack of suitable alternative available accommodation, I have given the recent appeal decisions significant weight in favour of the proposal.
9. Establishing agricultural need is an area of specific expertise. A substantial labour requirement at the site, and across the wider Heal Eggs Ltd operations, has been demonstrated by the appellant with reference to accepted industry standards. The Council's assertion that the automated functioning of modern poultry units negates the essential need for an available nearby worker's dwelling is inconsistent with the findings of the recent appeal decisions.
10. The Council's failure to have due regard to the importance of consistency in decision-making, combined with its failure to robustly justify a departure from the analogous findings of the Inspector in the recent appeal decisions, represents unreasonable behaviour.
11. Without giving due consideration and weight to the recent appeal decisions, it was unreasonable for the Council to refuse planning permission on the issue of essential agricultural need. This unreasonable behaviour has resulted in the applicant directly incurring unnecessary and wasted expense in submitting their appeal. Having regard to the provisions of the Guidance, a full award of costs is therefore justified.

### **Costs Order**

12. 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 Shropshire Council shall pay to Mr T Heal (Heal Eggs Ltd), 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.
13. The applicant is now invited to submit to Shropshire 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.

*S D Castle*

INSPECTOR