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## Costs Decision

Inquiry opened on 11 February 2014

Site visits made on 11 February and 26 March 2014

**by Richard Clegg BA(Hons) DMS MRTPI**

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

**Decision date: 29 July 2014**

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### **Costs application in relation to Appeal Ref: APP/L3245/A/13/2203327 Field east of Vantage Farm, Bletchley Road, Bletchley**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Harrison Farms for a full award of costs against Shropshire Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for development originally described as 'agricultural sheds, ancillary buildings, new access, road improvements and a landscape scheme'.
  - The inquiry sat for eight days, on 11-14 and 17-18 February, and 25-26 March 2014.
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### **Decision**

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

### **Procedural matter**

2. I have considered the appeal on the basis of a proposal for the erection of six poultry sheds, 16 feed bins, a biomass store, a boiler room and ancillary buildings, including 6 control rooms and an office, the construction of a weighbridge, the formation of a new access, road improvements, a landscaping scheme, and the installation of 212 mono crystalline solar panels on the roof of poultry shed No 6.

### **The submissions for Harrison Farms**

3. The costs application was submitted in writing. The gist of further submissions made at the inquiry is as follows. There was nothing to indicate that the revised scheme would necessarily have been refused. This was a marginal case. The Council had been unable to provide a cogent reason for refusal in December 2012, and the revisions proved that concerns were capable of being addressed. Whilst the revisions were not so fundamental as to require a new application, there were adjustments to address the concerns raised. Withdrawal of the application and submission of a fresh one would not have been the right course of action. The Committee was not in a position to determine that the amended scheme would not overcome its concerns, since the nature of the amendments had only been described in broad outline. The Senior Conservation & Design Officer's comments on heritage were not considered to be full and comprehensive. The Council had not been kept waiting for a heritage assessment, and the proposal was not wholly unsustainable from an environmental perspective, since it had been recommended for approval.

4. The Council had recognised in its closing submissions that fear of systems failure would not be determinative of the appeal. Insofar as the heritage argument was concerned, it was unsatisfactory to rely on passing references to buildings. There had been no reference to listed buildings in the reason for refusal, nor to the church at Moreton Say in the Council's statement of case. As the Council had asserted that certain other buildings were part of listed buildings, it was under an obligation to show that that was so, but the wrong test was applied. There was a statutory obligation in the event that the setting of a listed building was affected, and this situation had had to be explored.

### **The response by Shropshire Council**

5. The Council's response was made in writing.

### **Reasons**

6. The Planning Practice Guidance (PPG) advises that 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.

### ***Amended scheme***

7. The Council refused planning permission for the poultry enterprise at Vantage Farm, but the report to the meeting of the North Planning Committee in December 2012 had recommended that planning permission be granted (Core Document 7 - CD7). The minutes record the resolution that members were minded to refuse permission, and also that a further report was to be submitted to a future meeting of the Committee (CD8). Correspondence between the main parties following the initial committee meeting addressed the possible options, and in an email of 14 December 2012, the Council's Planning Manager advised that, although there was an expectation that the Committee would ratify the original resolution, the options available included amending the scheme (CD14C6). The Appellant's representative had indicated that an amended scheme could involve reductions in height of the feed bins and biomass building (CD14C7 & 8), which would have been expected to lessen the impact of a scheme which had previously received a favourable recommendation.
8. In the circumstances of this proposal, and bearing in mind the provisions of paragraphs 186 and 187 of the National Planning Policy Framework which encourage local planning authorities to approach decision-taking in a positive way and to look for solutions rather than problems, I consider that the Council should have considered the revised scheme proposed by the Appellant. It does not follow that planning permission would have been likely to be forthcoming, but this would have clarified matters in advance of the inquiry, and avoided the need to address both schemes in evidence.
9. I conclude that the Council behaved unreasonably in refusing to consider an amended scheme for the poultry development, and that this caused the Appellant unnecessary expense in addressing both schemes in preparing for the inquiry.

### ***Failure of systems***

10. The perception of a risk, such as the failure of operating systems at the poultry development, is capable of being a material consideration. Reference to the fear of failure of systems was included in the reason for refusal. However, as paragraph 16-049 of the PPG makes clear, evidence should be produced on appeal to substantiate each reason for refusal. The Council referred to the size of the proposal and its proximity to Bletchley, but such generalised assertions were insufficient to justify the concern expressed about failure of systems, particularly in the light of the detailed evidence submitted in the environmental statement (CD2) and the consultation responses of the Council's Public Protection Officer (CD12H). In his proof of evidence, the Council's planning witness commented that the risk of system failure would be no greater than at any other site, and he also referred to possible alternative intensive agricultural use of the land. He suggested that limited weight should be given to this matter, but that does not absolve the Council of the need to substantiate a matter specifically referred to in the reason for refusal.
11. I conclude that the Council behaved unreasonably in referring to the fear of failure of systems in the reason for refusal. However this matter was also raised by Bletchley Residents Group and individual local residents in respect of the application and in representations submitted in response to the appeal. These concerns were addressed by the Appellant and I do not consider that any additional expense would have been incurred in dealing with the reason for refusal.

### ***Highway works***

12. The reason for refusal referred to the highway works being out of context with the landscape form and adding to the adverse impact on the character and distinctiveness of the local area. This matter was not addressed specifically in the Council's evidence, and its failure to substantiate this part of the reason for refusal was unreasonable. Whilst the Residents Group and local residents objected on the ground of the effect on the character and the appearance of the area, their concerns focussed on the development as a whole. The effect of the highway works was addressed by the Appellant: the Council pointed out that this only involved a small part of the evidence. That is so, but any costs incurred were unnecessary.
13. I conclude that the Council behaved unreasonably in failing to substantiate the concern expressed about the effect of highway works, and that this caused the Appellant unnecessary expense in addressing this matter.

### ***Additional objections***

14. The only heritage asset referred to in the reason for refusal is the village of Bletchley. In its statement of case, the Council referred to groups of listed buildings at Bletchley Manor and Manor Farm. No building has been identified by the latter name, but the Appellant has assumed that this was a reference to Bletchley Court, the former farm buildings of the farm at Bletchley Manor. Subsequently, in December 2013, in commenting on the statement of common ground, the Council made clear its intention to refer to the impact on the setting of St Margaret's Church, a grade II\* listed building in Moreton Say. There is reference to the presence of the church in the second committee report and to the effect on links between heritage assets in Bletchley and

- Moreton Say and on the historic character of the two villages (CD9). However there is no specific reference to harm to the setting of St Margaret's Church.
15. No heritage statement was prepared as part of the environmental impact assessment, and the Council suggested that the Appellant had failed to engage on this topic until after the refusal of planning permission. However it was the Council's responsibility to specify its objections to the proposed development in its reasons for refusal. The Council should have made reference to the heritage assets about which it was concerned in the reason for refusal. Bletchley Manor and Bletchley Court (assuming that this is what is meant by Manor Farm) were identified in the statement of case, and the Appellant was in a position to deal with these buildings in the preparation of its heritage statement and evidence.
  16. The introduction of the objection in respect of St Margaret's Church was made at a late stage in the proceedings, contrary to the intention of paragraph 16-047 of the PPG. The Appellant has explained that this necessitated additional work by its heritage consultant, and an addendum to the heritage statement was prepared concerning St Margaret's Church.
  17. I conclude that the Council behaved unreasonably in specifying objections to Bletchley Manor, Bletchley Court and St Margaret's Church, after the refusal of planning permission, but that this only caused the Appellant unnecessary expense in respect of St Margaret's Church.
  18. The Appellant also alleges that the Council changed its position on whether the development would conflict with certain Core Strategy policies shortly before the original date for the submission of proofs. The policies concerned are all identified as relevant in the statement of common ground, which records that whether the development conflicts with the policies is a matter of dispute. That position is not inconsistent with the reason for refusal or the Council's statement of case, and I do not consider that the Council behaved unreasonably in this matter.

### ***The approach to listed status***

19. The main parties disagree as to whether Bletchley Court and Royal Oak Barns are part of the adjacent listed buildings at Bletchley Manor and The Royal Oak. In her evidence to the inquiry, the Council's Senior Conservation and Design Officer addressed matters relevant to the tests set out in case-law as to whether other buildings are part of the listed building, referring to the physical arrangement of the properties, ownership, and their use. I conclude that the Council did not behave unreasonably in this regard.

### **Overall conclusions**

20. I conclude that unreasonable behaviour by the Council resulted in unnecessary expenditure by the Appellant in addressing two schemes in preparation for the inquiry, the effect of highway works, and the effect on St Margaret's Church. A partial award of costs is justified in respect of these matters.

### **Costs Order**

21. 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 Harrison Farms, the costs of the appeal

proceedings described in the heading and paragraph 2 of this decision, limited to those costs incurred in addressing two schemes in preparation for the inquiry, the effect of highway works, and the effect on St Margaret's Church.

22. 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. 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.

*Richard Clegg*

INSPECTOR