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APPLICATION FOR THE AWARD OF COSTS FOR APPEAL

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1. This application for costs is made against Cherwell District Council’s unreasonable refusal of prior notification application 20/01902/Q56. The application was for a change of use of an agricultural building to a single residential dwelling (use class C3) made under the provisions of Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The application was made under the provisions of Class Q (a) only.

2. As explained in the Statement of Case, the Appellant did not seek a prior approval in respect of operational development, yet the refusal is based on the lack of compliance with criteria which directly relate to operational development.

3. Whilst the Appellant is aware that each party involved in an appeal meets their own expenses, the Appellant suggests that in this instance the Local Planning Authority has acted in an unreasonable manner, resulting in a wasted expense in the preparation of the appeal for the reasons set out herein.

4. The Council’ refusal notice provided three reasons for refusal which can be summarised as follows:
 - 1) Insufficient information has been provided to demonstrate that the building relates to an agricultural holding; and
 - 2) It is alleged that in ‘all likelihood’ the site was used for other than agricultural purposes on the 20th March 2013; and
 - 3) The application was refused in accordance with paragraph W.(3)(b) as the Council assessed that insufficient information was provided to assess the scheme against criterial (h) and (i) of Class Q.1

5. The Appellant suggests that the Council has been inconsistent in its decision-making in respect of the first reason for refusal as it previously acknowledged that the site formed a part of a working farm.¹

¹ Statement of Case paras 5.11 and 5.12

6. In respect of the second reason for refusal, the Statement of Case have clearly set out² that the Council only assessed the use of the building against provision of paragraph Q.1 (a)(i) on 20th March 2013, but failed to consider the remaining provisions of this paragraph.
7. The third reason for refusal is unfounded as it relates to criteria in Class Q.1 and Q.2 which deal specifically with operational development. The accompanying Statement of Case clearly outlines why these do not apply to the appeal scheme which deals with the principle of change of use only under the provision of Class Q (a).
8. There were no technical objections to the scheme from statutory consultees in relation to highways, drainage, contamination or flooding.
9. The Parish Council objected to the scheme citing the lack of final design drawings, but expressed their desire for the development of the site in order to enhance the area and its historic buildings.

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10. The Planning Practice Guidance (PPG) advises that the aim of the costs regime is to, inter alia, *“encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case”*.³
11. The PPG further states that *“costs may be awarded where: a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process”*⁴
12. The Guidance, particularly paragraph 049 sets out instances in which a substantive award of costs may be made. A list of examples of unreasonable behaviour is also provided. The Appellant relies on the following:
 - *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.*
 - *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*

² Statement of Case paras 5.16 – 5.22

³ Reference ID: 16-028-20140306

⁴ Reference ID: 16-030-20140306

13. In addition to the above examples, it is also unlikely that the Council will be able to substantiate the third reason for refusal on appeal, as this deals with considerations which did not form part of the appeal scheme. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) sets out limitations, conditions and restrictions. The paragraph Q.1(i) clearly refers to “the development under Class Q(b)”. As outlined in the accompanying Statement of Case, the appeal scheme has not sought approval under the provisions of Class Q (b).
14. As such, the Appellant suggests that the Council has behaved unreasonably in refusing the development on the grounds of operational development considerations despite the application not being made on these grounds.
15. The reasons for this unusual approach to development of a former agricultural building have clearly been explained during the determination period. These are case specific in so far that they will allow for more sensitive and holistic development on the wider site.
16. However, the Appellant maintains that this approach is also entirely consistent with other Classes of Schedule 2, Part 3 of the Town and County Planning (General Permitted Development) Order 2015 some of which expressly allow changes into residential use with a presumption that a subsequent full planning application will deal with the operational development to facilitate the end residential use.
17. In respect of reasons for refusal 1 and 2, the Appellant suggests that the Council has misinterpreted the planning legislation, and therefore prevented development which should clearly be permitted, having regard to the proposal’s compliance with the relevant limitations, conditions and restrictions of Part 3, Class Q (a).
18. The Appellant has thus incurred unnecessary costs in instructing and preparing this appeal, which could have been avoided.
19. The Appellant therefore seeks a full claim of costs against the Council