
Costs Decision

Site visit made on 5 July 2016

by Rory Cridland LLB (Hons)

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

Decision date: 15 August 2016

Costs application in relation to Appeal Ref: APP/Q3305/W/16/3146648 Agricultural Building at Bennetts Lane, Binegar, Somerset

- 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 BW & MA Carter for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of approval required under a development order for a change of use of an agricultural building and land within its curtilage to a dwelling.
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Decision

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

Reasons

1. Planning Practice Guidance advises 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 expense in the appeal process. Furthermore, it indicates that Local Planning Authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal.
2. The appellants essentially argue that, in refusing the application, the Council has failed to take account of the evidence before it and has unreasonably maintained an interpretation of paragraphs Q.1(b) which cannot be substantiated. The Council however maintains that its interpretation of paragraph Q.1(b) is the correct one.
3. I have found against the Council on this matter. My decision was, in part, based on the advice contained in the PPG and the correspondence from DCLG which was submitted by the appellant as part of this appeal. It is reasonably clear from these documents, when read in conjunction with the definition of 'building' set out in the Order, that the maximum limit referred to applies to that part of the building or buildings to be converted. These documents are referred to in the Officers report and were clearly taken into consideration as part of its determination.
4. I note that the Council has sought to apply a consistent approach and has given significant weight to the previous appeal decision on this site¹. However, the approach taken by the Inspector in that decision must be read in light of

¹ APP/Q3305/A/14/2229199

the written view expressed in the correspondence from DCLG and the introduction of the PPG which, together provide a good degree of clarity on the interpretation of this section. It appears that the Council, having had sight of all this information, consider it to be outweighed by the conclusions reached by the previous inspector, part of which it has been accepted were flawed. I do not consider this approach to be reasonable. Having regard to the provisions of the GDPO, the PPG and the other evidence before it, the Council should reasonably have granted approval.

5. Consequently, I find the approach taken constitutes unreasonable behaviour on the part of the Council. This unreasonable behaviour has resulted in the appellants having incurred wasted expense in pursuing this appeal. I therefore conclude that an award of costs is justified.

Costs Order

6. 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 Mendip District Council shall pay to BW & MA Carter, the costs of the appeal proceedings described in the heading of this decision.
7. The applicant is now invited to submit to Mendip 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.

Rory Cridland

INSPECTOR