
Costs Decision

Hearing held on 28 September 2016

Site visit made on 28 September 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 12 October 2016

Costs application in relation to Appeal Ref: APP/J1915/W/16/3144930 Crouchfield Farm, Wadesmill Road, Chapmore End, Ware, Herts SG12 0RX

- 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 David Peters for a full award of costs against East Hertfordshire District Council.
 - The hearing was in connection with an appeal against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of agricultural building to a dwellinghouse (1 x 2 bedroom dwelling).
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Decision

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

The submissions for Mr David Peters

2. The costs application was submitted in writing. At the hearing the appellant reiterated that the Council had been unreasonable to refuse prior approval for the change of use. Building 30 had always been in agricultural use. The 1993 permission had never been implemented, it was subject to conditions which had never been fulfilled and had therefore lapsed. The building does not lend itself to non-agricultural use.
3. With regard to the second reason for refusal, the Council had ignored the clear guidance in paragraphs 108 and 109 of Planning Practice Guidance (PPG) and had unreasonably pursued these arguments despite several adverse appeal decisions and awards of costs in similar cases elsewhere in the district.

The response by East Hertfordshire District Council

4. The Council's response was also made in writing and supplemented orally at the hearing. In relation to the use of the building, there were serious doubts as to the credibility of the statutory declarations as they were directly contrary to the evidence of the 1993 and 2001 appeal decisions. Therefore it was reasonable not to take them at face value. The non-payment of business rates is not determinative of the actual use, and no other evidence was submitted.
5. In relation to the second reason for refusal, the siting of the building adjacent to what is now partly a commercial yard would result in a poor outlook and noise and disturbance for the occupiers. This is essentially a matter of judgement and it was reasonable to raise these concerns at appeal particularly as the site is not wholly agricultural in nature.

6. With respect to the isolated location argument, the Council recognise that costs have been awarded against them elsewhere in the district when pursuing the same point. However, the Council now have a live legal challenge underway against a comparable Class Q appeal decision in the district¹ which seeks to establish that the sustainability of the location is a relevant consideration in accordance with the policies in the National Planning Policy Framework (NPPF). The fact that this challenge is underway is a new factor which makes the Council's continued pursuit of the point during this appeal reasonable.

Reasons

7. 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 or wasted expense in the appeal process.
8. In this case the Council refused prior approval for the change of use of the building for two reasons, the latter having two separate elements.
9. The first reason was that insufficient evidence had been submitted to demonstrate that the building concerned was used solely for agricultural purposes on 20 March 2013 or when last in use. The appellant claimed that the building had always been in agricultural use, as confirmed by three statutory declarations, that the nearby buildings had always been described as agricultural by the Council and the matter was not raised when prior approval was sought for the change of use of the adjacent building 29.
10. However, when researching the planning history of the site after the decision on building 29, the Council uncovered further information, in particular two Inspectors decisions dating from 1993 and 2001. These indicated that building 30 had been used for non-agricultural storage on those dates, which was inconsistent with the three statutory declarations. It is regrettable that this information was not available earlier, but on its discovery it was reasonable for the Council to take it into account and consequently not to take the statutory declarations at face value. Decisions should be made on the basis of all the information available at the time. Since the actual use of the building is critical as to whether there are permitted development rights under Class Q, and the planning history suggested the use may not have been agricultural in 2013, it was reasonable for the Council to pursue this argument at appeal.
11. In relation to the second reason for refusal, the Council argued that it was undesirable for the building to be used as a dwelling, firstly due to its siting adjacent to a farmyard/commercial storage yard, and secondly due to its isolated location in the countryside away from key services and facilities such as public transport, schools and shops.
12. Dealing with siting, the building currently forms part of a group of buildings and associated yard which forms the centre of an agricultural unit but also includes a commercial business operation. The Council are concerned that the occupiers of the building would have a poor outlook to the east, facing the access to the other buildings and yard with little or no screening in between. There would also be noise and disturbance to the occupiers of the building due to vehicle

¹ Appeal Ref APP/J1915/W/16/3142497 dated 20 June 2016.

- movements in close proximity, some of which would be heavy farm and contractors vehicles moving to and from the cattle corral and commercial yard.
13. These concerns are not of the same magnitude as those put forward in paragraph 109 of the PPG as examples when the change of use of a building may be undesirable. They would not be as serious as proximity to an intensive poultry farm building, silage storage or buildings with dangerous machines or chemicals. However, there may be lesser concerns which would still result in undesirable living conditions for the occupiers. Furthermore, in this case the adjacent yard and buildings are not wholly in agricultural use, a situation which may not have been envisaged in PPG. In these circumstances, whether or not the concerns were actually fully justified, it was not unreasonable for the Council to pursue them at appeal.
 14. In relation to the Council's argument that the proposal is also undesirable due to its isolated location in the countryside, this is in clear conflict with paragraph 108 of the PPG. This states that 'the permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport'. Despite this conflict the Council have fruitlessly advanced the same argument in several recent appeals, losing on each occasion including costs in some cases.
 15. The Council argue that to the extent that paragraphs 108 and 109 of the PPG seek to exclude relevant policies of the NPPF, they are wrong. The Council obtained legal advice in January 2016 that the provisions of Class Q and paragraph W(10)(b) of the 2015 Order entitle it to take into account the policies of the NPPF so far as relevant to the subject matter of the prior approval², and this includes all aspects of sustainability. This argument is now being tested by means of a legal challenge to a recent appeal decision allowing a similar Class Q proposal in the district. The challenge commenced in July and a decision whether or not it should proceed to a full hearing is imminent.
 16. However, the fact that the Council believes it has an arguable legal case to challenge a recent appeal decision, and by implication the validity of the guidance in paragraphs 108 and 109 of the PPG, does not make the Council's position in relation to this appeal reasonable. The Council's decision to refuse the application on this ground and the commencement of the appeal process by the appellant were both in February 2016, whilst the legal challenge relating to an entirely separate case (albeit touching on the same legal issue) did not commence until July 2016 when this appeal was well underway.
 17. In addition, unless and until the challenge is successful and paragraphs 108 and 109 of the PPG are withdrawn, they remain an important material consideration in the determination of this appeal. The precedent set by the earlier appeal decisions and awards of costs in the district are also material considerations, and the Council had no suggestions at the hearing as to how the current case could be distinguished from these earlier cases in relation to the sustainable location point.
 18. The action of the Council in pursuing this part of their case to appeal, albeit not their other arguments, has therefore been unreasonable. This has meant that

² In this case whether the location or siting of the building makes it impractical or undesirable for the building to change from agricultural use to a dwellinghouse.

the appellant has been put to the unnecessary expense of seeking to counter this aspect of the appeal. Consequently I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated in relation to the isolated location issue and that a partial award of costs in that respect is justified.

Costs Order

19. 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 East Hertfordshire District Council shall pay to Mr David Peters the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to whether the location of the building makes it undesirable for the building to change to use as a dwelling due to its isolated location.
20. The applicant is now invited to submit to East Hertfordshire 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.

David Reed

INSPECTOR