
Costs Decision

Site visit made on 8 September 2016

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 17 October 2016

Costs application in relation to Appeal Ref: APP/Z3825/W/16/3147881 Bramble Barn, The Street, Thakeham, Storrington, West Sussex RH20 3ER

- 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 Simon Woodage for a full award of costs against Horsham District Council.
 - The appeal was against the refusal of to grant approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the conversion to a one bedroom dwelling.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may 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. The PPG states that local planning authorities are at risk of an award of costs if they prevent or delay a development which should clearly be permitted, provide vague, generalised or inaccurate assertions unsupported by objective analysis, refusing permission where a condition could be used, being inconsistent or persisting in objections to a scheme or elements of a scheme that an Inspector has previously indicated is acceptable.
 3. The Council refer to the definition within the PPG as to where an agricultural building is impractical and undesirable within the second reason for refusal. As an example, it suggests that this includes buildings at the top of a hill, with no road access, power source or other services. The Council have used this as the basis of their consideration as to whether the building is sufficiently isolated to be impractical or undesirable for a change to residential use. However, it was clear from my site visit that although the building is toward the top of a hill, it is otherwise not an isolated building. It is accessible by an access track that also forms a public right of way, power lines are located directly outside the building and water is commonly provided to agricultural buildings for drinking and washing purposes. The site is also located only a short distance from the settlement of Thakeham.
 4. These features are clearly evident at the site and I consider that it was unreasonable for the Council to refuse the application for this reason and that this has led the appellant to incur unnecessary expense in the appeal process.
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5. In relation to the contamination issue, I note that there has been some discussion between the appellant and the Environmental Health Officer of the Council, on the basis of whose advice the decision was taken. The Environmental Health Officer suggests that the Contaminated Land Risk Assessment was inadequate to demonstrate that the land is not contaminated, based on the history of the site and previous industrial and/or agricultural use. They refer to the requirements of paragraph 122 (I assume this should have been paragraph 121) of the National Planning Policy Framework and, in further correspondence, to Schedule 2, Part 3, Class W of the Town and Country Planning (General Permitted Development) (England) Order 2015. That refers to the definition of contaminated land provided by Part 2A of the Environmental Protection Act 1990.
6. Whilst I have found in my decision that the assessment submitted was proportionate to the risks identified this is, at least to some extent, a matter of judgement. The appellant suggests that the contamination risks identified by the Council could have been dealt with by condition. I consider that the Council's assessment of the application would have benefited from explicit consideration of this matter, especially as it is evident that they were considering altering their procedures in order to use conditions more widely in relation to contamination on this type of application. However, I do not consider that it was unreasonable to refuse the application for this reason.
7. Relevant paragraphs from other appeal decisions have been provided. However, it is clear that these related to other sites and there is no evidence that the circumstances were directly comparable to those of the appeal site. It was not unreasonable therefore for the Council to reach its conclusion on the particular merits of the appeal scheme.
8. For the reasons set out above, I therefore conclude that a partial award of costs to cover the expense of the appellant in contesting the second reason for refusal is justified.

Costs Order

9. 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 Horsham District Council shall pay to Mr Simon Woodage, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second reason for refusal relating to whether the location or siting of the barn makes it impractical or undesirable to change use to a Class C3 dwelling house; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Horsham 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.

AJ Steen

INSPECTOR