
Costs Decision

Site visit made on 20 September 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 1 November 2016

**Costs application in relation to Appeal Ref: APP/J1915/W/16/3152203
Livestock and agricultural, Edwards Green Farm, Brickendon, Hertford,
Herts SG13 8NT**

- 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 Ray Peters for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of approval required under a development order for 'Change of use of agricultural building to dwellinghouse'.
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour.
 4. Examples of substantive unreasonable behaviour referred to in the PPG include (1) 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 and (2) not determining similar cases in a consistent manner.
 5. As the application subject to appeal was submitted under Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the 'GPDO') it could only be considered in relation to matters set out in the GPDO and related guidance. A section of the PPG provides detailed guidance on the operation of Class Q.
 6. The Appellant's costs application claims that the Council did not promptly or fully release legal advice on which it based its decision. Whilst the PPG and legislation concerning the award of costs do not set any obligation on a local
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planning authority to release such legal advice¹, the costs application also has an underlying theme that the Council's refusal of prior approval was inconsistent with the PPG, other appeal decisions and previous decisions made by the Council in relation to similar cases. I have considered the application on the basis of these matters.

7. In my appeal decision, I acknowledge that the proposed dwelling would be in an isolated position as set out in the Council's reason for refusal. However, I have also found that as the Council decision in effect applied a test of 'sustainability of location' it was directly contrary to the advice of the PPG² that the Class Q.2 permitted development right does not apply such a test.
8. As stated by the Council, paragraph W.10 of Part 3 of the GPDO requires it, when determining an application under Class Q, to have regard to the National Planning Policy Framework (the 'Framework') so far as relevant to the subject matter of the prior approval, as if the application were a planning application. However, in my decision I have found that the relationship between the GPDO, PPG and the Framework is more subtle than that implied by the Council and this factor does not reduce the substantial weight that the Council should have given to the PPG.
9. Of the appeal decisions concerning other sites referred to in the costs application, most were in the same local authority area as the application subject to the appeal before me, and whilst all cases must be treated on their merits, they all support the approach in the PPG in relation to 'sustainability of location'. Whilst some of them post-date the Council's decision on the appeal proposal, those that were available at the time would have served to emphasise to the Council the importance of complying with the PPG guidance.
10. Whilst the Council has argued that the Government did not take the opportunity to 'clarify' the terms of the GPDO when it was amended in April 2015, as the PPG is clear in the approach that it should have adopted it should not have given substantial weight to this point. Although the Council has referred to legal advice, as this does not appear to have been provided in full and has not been tested in any court of law it does not demonstrate that the Council acted reasonably in contravening the advice of the PPG.
11. For reasons which are set out above, I find that the Council's decision had the effect of preventing or delaying development which should clearly be permitted, having regard to its accordance with the PPG.
12. Furthermore, the Council's resistance of the appeal proposal due to its remote rural location runs directly counter to its decision to approve a similar conversion of a building on the same farm complex (reference 3/15/1854/ARPN) and the fact that it did not refuse the earlier proposal relating to the building subject to appeal for the same reason (reference 3/15/2571/ARPN). As there is no material difference between the desirability of the location for dwelling use in the context of these proposals, the Council failed to determine similar cases in a similar manner.
13. I note that the Appellant is represented by an agent, meaning that as a result of the behaviour described above he will have had to expend unnecessary or

¹ This finding does not over-ride any separate statutory obligations that the Council may have in relation to the release of information.

² Paragraph: 108 Reference ID: 13-108-20150305

wasted expense in the form of agents' fees and associated costs in submitting the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

14. 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 Ray Peters the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. 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.

Jonathan Clarke

INSPECTOR