
Costs Decision

Site visit made on 13 September 2016

by R J Jackson BA MPhil DMS MRTPI MCMi

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/K0425/W/16/3150912 Town End Farm, Horseshoe Road, Radnage, Buckinghamshire HP14 4EB

- 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 & Mrs P Fessler for a partial award of costs against Wycombe District Council.
 - The appeal was against the refusal of planning permission for conversion of existing barn and incorporation of two other buildings to form tourist accommodation.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
 3. The application for partial costs was made in writing as was the response of the Council. The application was for partial costs relating to that part of the first reason for refusal concerning the change of use element of the proposal and the totality of the second reason for refusal relating to the effect on the setting of Towns End Farmhouse as a listed building.
 4. To deal with these in turn. In looking at the report drawn up by the Council and the decision notice the first part of the first reason for refusal does refer to the Council not being satisfied that the building could be converted without being completely and substantially reconstructed. While there were a number of changes to the fenestration these are relatively minor and do not affect the structural integrity of the building. To say that this involved a major change from the previously approved scheme is not borne out by the facts and is inconsistent with the position it took with regards the previous application for the same site approved only a few months earlier. Clearly, had there been a change in circumstance in the intervening period, such as a catastrophic event, then matters may have changed. However, this was not the case.
 5. To say that it was incumbent on the applicant to have submitted the same report again, when the Council will have been in possession of the report, is not acting in a positive way as required by paragraph 186 of the National Planning Policy Framework. No evidence was submitted by the Council to say that the nature of the extension meant that the structural report could no longer be relied upon with regard to the proposal then in front of it.
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6. Therefore in this regard I consider that the Council has not determined similar cases in a consistent manner¹ and has therefore acted unreasonably. This led to the appellant having to address this part of the first reason for refusal in the appeal which otherwise would not have been necessary and this has led to unnecessary expense in the appeal process.
7. In respect of the second reason for refusal I would agree with the applicants that the Conservation Officer's comments related more to the details of the conversion rather than the effect on the setting of the listed buildings. However, this does not mean that the Council did not necessarily have to agree with that officer.
8. Although I have found that the proposal would not have an unacceptable effect on the setting of the listed building, given the proximity between the appeal site and the listed building it was a matter of judgement as to whether it would have such an effect. I consider that the Council justified its position and therefore conclude that in this part of its decision the Council did not act unreasonably.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Wycombe District Council shall pay to Mr & Mrs P Fessler the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of those elements of the first reason for refusal relating to the nature of the existing building to be converted; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Wycombe 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.

RJ Jackson

INSPECTOR

¹ Planning Practice Guidance Reference ID 16-049-20140306, seventh bullet