

Costs Decision

Site visit made on 16 August 2016

by R J Marshall LLB DipTP MRTPI

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

Decision date: 4 November 2016

**Costs application in relation to Appeal Ref: APP/C3105/W/16/3149323
The Grain Silos, Godington Hall, Godington, Bicester, Oxfordshire, OX27
9AE**

- 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 J Kevill for a full award of costs against Cherwell District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for approval required under a development order for the conversion of 2 agricultural grain silos to 2 single-storey residential properties.
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Decision

1. The application for an award of costs is refused.

Reasons

2. *Planning Practice Guidance – Appeals (PPG)* advises that 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.
 3. The appellant submitted a costs claim in writing and the Council responded in writing.
 4. In essence the appellant's claim is that as the Council was out of time to make its decision and had no grounds on which to then go on to make one. This led to the unnecessary expense of appealing the decision. For although the appellant had every right to proceed with the development he could not do so with the potential of enforcement action hanging over him.
 5. In response the Council says that it did not act unreasonably in making a decision as it was unaware that it was out of time. And as the proposal was not permitted development it was appropriate for the Council to refuse prior approval. Appeal decisions (APP/Q3305/W/15/3129921 and APP/Q3305/W/15/3130505) indicate that where a Council is no longer able to make a determination through being out of time it is still necessary to determine whether the proposal was permitted development. And on none of the other grounds within the Costs Circular are costs justified.
 6. In reply the appellant says that the ability to consider information outside the 56 day period applies only to an Inspector, and that Councils must adhere to
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that limitation. Any other view would render the 56 day limitation virtually obsolete. The Council could have sought to address its concerns during the application process. In decision APP/Q3305/W/15/3129921 the Inspector awarded costs on the basis that the Council should have established during the decision-making process that the building was in agricultural use.

7. At the time the appeal was submitted the Council had yet to make its decision on the second application. The Council suggested submitting a re-application on the 2 appeal buildings. However, the appellant was not confident of the Council's decision and considered it prudent to appeal.
8. The late issue of the Council's decision would seem to be an administrative oversight. It does not, in my view, constitute unreasonable behaviour in the terms of the *PPG*. The decision being out of time meant that prior approval was deemed to have been granted. However, that did not necessarily mean that the development would be lawful. Prior approval can only be granted to development which falls within a permitted development right.
9. Thus in cases of non-determination a cautious applicant may seek either to submit an application for a lawful development certificate for the proposed development or, as in this case, appeal on the grounds of the non-determination of the application. It was wise, in my view for the appellant in this case to have done so. The application was clearly lacking information for the Council to determine whether or not the proposal was permitted development. And even when the second application was submitted a plan necessary for the Council to be absolutely sure on this point was missing. This only came to light at appeal stage.
10. Whilst the Council may seek additional evidence when the application is live a substantial responsibility lies with the applicant to provide the necessary information. In this case what was required should have been fairly evident without a need for the Council to have had to probe for it and even then it did not obtain all that was ideally required. Costs on appeal decision APP/Q3305/W/15/3129921 were based upon evidence leading to the withdrawal of a reason for refusal and thus has no substantial bearing on my consideration of this costs claim.
11. Given the above I do not consider the Council to have acted unreasonably. Its actions in effect alerted the appellant to concerns, justified on the relative paucity of evidence then submitted, as to whether the proposed development was permitted development and would be lawful if undertaken.
12. I therefore find that unreasonable behaviour resulting in a unnecessary or wasted expense, as described in the *Planning Practice Guidance*, has not been demonstrated and that an award of costs is not justified.

R J Marshall

INSPECTOR

