
Costs Decision

Site visit made on 22 August 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 9th November 2016

Costs application in relation to Appeal Ref: APP/R3650/W/16/3148919 Kilinside Farm, Moor Park Lane, Farnham, Surrey GU10 1NS

- 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 R Milton for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of an application for prior approval required under Schedule 2, Part 3, Paragraph Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of two agricultural barns and associated building operations to provide three dwellinghouses
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Decision and Costs Order

1. 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 Waverley Borough Council shall pay to Mr R Milton, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the reason for refusal relating to whether the proposal was one permitted by the Order; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Waverley Borough 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.

Reasons

3. 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.
 4. Following a previous refusal a Principal Planning Officer of the Council advised the appellant in writing that a revised application would overcome the Council's objection in relation to whether the proposal would fall within the provisions of Class Q.1(a) of the Order. That advice followed a meeting that the author had with the Council's planning lawyer. The appellant duly re-submitted a revised application and the Council reconsidered the matter and a contrary view prevailed.
 5. I recognise that officer opinion is not normally binding on the Council, but even so, a legal opinion offered by the Council should be capable of being relied on, unless there is good reason to the contrary. In the substantive appeal decision
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I found that the Council failed to have proper regard to the definitions contained within the Order, and in particular to the definition of the "the Site" as meaning "the building and any land within its curtilage". The buildings to be converted were clearly denoted on the plans, and they did not include any part of a building which had been used for purposes other than agriculture. A proper analysis should have had greater regard to the plans and the statutory definitions, and I consider that the Council's behaviour in seeking to embrace other buildings within the meaning of the term "the site" was unreasonable.

6. I therefore find the Council acted unreasonably in finding that the proposal fell outside of the terms of the Order, and that the appellant was put to unnecessary expense in bringing the appeal on this ground.
7. In respect of the need to mitigate the effect of the development on the Thames Basin Heaths Special Protection Area (SPA), I have found that it was necessary to do so before granting prior approval under the Order. I have also found that the "pooling effect" of the Community Infrastructure Levy Regulations 2010 does not apply to applications for prior approval. The Council's reference to a development plan policy did not alter the need for the mitigation to be addressed. I therefore find that the Council did not act unreasonably in refusing the application on this ground.
8. The delay in responding to the draft obligation would not have resulted in the appellant incurring additional costs, bearing in mind that an obligation would have to be entered into in any event. As it is, the appellant chose to argue that an obligation was unnecessary, and this would have needed to be dealt with at appeal. I therefore find that, in this regard, the Council did not act unreasonably resulting in the appellant incurring unnecessary expense in this regard.

Conclusion

9. Unreasonable behaviour within the meaning of the Guidance has been demonstrated in respect of the reason for refusal relating to whether the proposal was one permitted by the Order, and the appellant was put to unnecessary expense in bringing the matter to appeal. I find that the Council did not act unreasonably in respect of the second reason for refusal relating to the effect on the SPA. Accordingly a partial award of costs is justified.

JP Roberts

INSPECTOR