

Costs Decision

Hearing held on 26 October 2016

Site visits made on 28 July and 26 October 2016

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 21 November 2016

Costs application in relation to Appeal Ref: APP/E2734/W/16/3149251 Low Farm, Lowfield Lane, Sharow, Ripon HG4 5BN

- 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 David Dale for a full award of costs against Harrogate Borough Council.
 - The appeal was against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 1995 (GPDO) to convert a former agricultural barn and farmhouse to a single dwellinghouse, including limited associated rebuilding work.
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Decision

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

Procedural Matters

2. In view of the time required for the site visit and considering the limited daylight hours, it was decided that the hearing would be adjourned for the application for costs, and the hearing was subsequently closed in writing. The appellant's costs application, response from the Council and final comments from the appellant were all submitted in writing. As the submissions are all in writing there is no need for me to recite them in detail in this decision.
3. The application advises that the costs sought are "the cost of appointing ADAS Planning to submit a planning appeal and the additional cost of appointing ADAS Planning to attend and prepare for the informal hearing". I have considered this as an application for an award of costs in full. This would not prevent me from making a partial award if my findings were to lead me to conclude that a partial award was justified.

Reasons

4. Given the number of factors that need to be considered with the assessment of a proposed development under Class Q of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) I found the Council's case relatively straightforward. Firstly, they argued that the proposal could not be permitted development because more land would be essential for the occupiers of the dwelling. Secondly, in considering the merits of the prior approval application, they argued that the amenity space provided by the siting and location of the curtilage would not be satisfactory. One consequence of this was that a larger area would be likely/probable. I did not find that there was
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- anything vague in the Council's case or that it needed substantiating with further evidence.
5. Although the appeal process was initiated as a written representation appeal it was converted to a hearing. This was in order to allow both parties a full and fair opportunity to address the issues, some of which arose from the evidence submitted by the appellant, and all of which related to the first issue and the question as to whether or not the proposal was permitted development. Most of the appellant's evidence was directed at this issue. I have also noted that the appellant had requested that the appeal be dealt with by way of a hearing at the outset.
 6. The appellant applied for the curtilage indicated in the prior notification submission and there was nothing to say that other areas had been identified for residential curtilage or proposed in relation to the application. At the appeal hearing the Council agreed that the curtilage of 207m² shown on Drawing L-PE-KD14-002 Rev C dated 27 July 2016 was less than the footprint of the building at 211m² and in this way would satisfy the second definition of curtilage given in the Interpretation section at paragraph X in Schedule 2 of the GPDO and therefore that it would be permitted development. This drawing was submitted by the appellant during the appeal process. The Council points out that the curtilage considered at the hearing was only identified and dimensioned on 3 August 2016 and maintains that prior to that date the proposal did not comply with the criteria set out in the GPDO. It is also a fact that the figure of 207m² was only presented at the hearing.
 7. I am not persuaded that the Council could have reasonably indicated their final position in this regard sooner.
 8. Part of the Council's argument was that the proposal could not be permitted development because it would be essential that the occupiers of the proposed dwelling would use a larger area of curtilage than that proposed. Whether or not a proposal is permitted development relies upon compliance with the relevant restrictions and limitations set out in the GPDO. This is not just a factual assessment and some of the criteria require a judgement to be made. The Council referred to other appeal decisions where similar judgements in respect of curtilage had been made. Having considered the details of the proposal, I did not find that in this case it would be essential that a larger curtilage be provided, but that is not to say it was unreasonable for the Council to have made a planning judgement that led them to conclude otherwise.
 9. I also found the appellant's argument that the proposal complied with the curtilage limitation in paragraph X to be flawed. That definition is expressly limited to an agricultural building. Paragraph X defines agricultural building and in doing so excludes a dwelling house. In my planning decision I found that there was simply insufficient evidence to say that the abandoned dwelling had become an agricultural building. For the purposes of curtilage this meant that the area of the dwelling would have to be excluded. At the hearing the appellant's agent accepted that if this was so, then the curtilage provision upon which they relied would apply to a smaller area. It would be less than 207m². Accordingly I found that the proposal was not permitted development.
 10. Many of the Council's concerns went to the heart of the merits of the prior approval application and the proposed residential curtilage was discussed at length at the hearing. Amongst other things, and in addition to addressing the

merits of the proposal, the appellant asserted that the application had to be considered within the limitations set by the constraints of Class Q and the Council pointed to advice in paragraph 17 of the National Planning Policy Framework in defence of their position.

11. However, I found that the proposal was not permitted development therefore it was not necessary for me to assess the merits of the prior approval application. Nonetheless I agree that it was reasonable that the Council had set their arguments out and explored at the hearing, for had I determined that the proposal was permitted development, and the appellant had submitted an application for prior approval I would have gone on to determine that issue. As the Council's witness succinctly put it at the hearing they had 'been caught out' in such situations before by not doing so.
12. Moreover, having considered the appellant's statement of case carefully I do not consider that addressing this issue at the Hearing caused the appellant to undertake any clearly identifiable separate and significantly additional work.
13. The Council's argument that future occupiers would seek to use a larger area was not a mere assertion. It was clear to me from their statement of case that it was predicated upon their concerns about the curtilage which I found to be reasonably and clearly expressed. In this way I find nothing to say that the argument was unreasonable.
14. Although there was a previous application to the Council, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unreasonable or wasted expense in the appeal process only. I have found no evidence to say that the Council's behaviour in this appeal process has been inconsistent.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in paragraph 52 of the Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

Helen Heward

INSPECTOR