

Costs Decisions

Site visit made on 8 November 2016

by Rory Cridland LLB (Hons)

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

Decision date: 01 December 2016

Costs Application A in relation to Appeal Ref: APP/D0840/W/16/3154883 Barn at Firste Park, Windsor Lane, Kelly Bray, Carlington, Cornwall, PL17 8HD

- 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 Cornwall Council for a partial award of costs against Mr Ian Kane.
 - The appeal was against the refusal to grant approval for the change of use of an agricultural building to 2 No. residential dwellings.
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Costs Application B in relation to Appeal Ref: APP/D0840/W/16/3154883 Barn at Firste Park, Windsor Lane, Kelly Bray, Carlington, Cornwall, PL17 8HD

- 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 Ian Kane for a full award of costs against Cornwall Council.
 - The appeal was against the refusal to grant approval for the change of use of an agricultural building to 2 No. residential dwellings.
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Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Reasons

Application A

3. Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it advises that the appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. While an applicant is not required to succeed in their argument, the PPG advises that the right of appeal should be exercised in a reasonable manner.
 4. In Application A, the Council asserts that in not satisfying the requirements of the Order the appellant had no realistic prospect of success. It points to a lack of evidence in relation to the building's use as well as the extent of the curtilage proposed.
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5. However, the risk of an award of costs does not arise from a failure to make out one's case, but from unreasonably pursuing a claim that has no reasonable prospect of success. Whether a building falls within the Class Q permitted development regime is a question of fact to be judged on the evidence available. A lack of evidence does not in itself amount to unreasonable behaviour; however, where there is such a paucity of evidence presented that the chances of success are so low that pursuing a case is unreasonable, an award of costs may be appropriate.
6. My decision makes clear that I do not consider the evidence presented was sufficient to establish that the building's use fell within Class Q. Nevertheless, in seeking to establish that it did, the arguments presented were cogent and were not spurious or without merit. I do not therefore consider them to have had no reasonable prospect of success. Accordingly, I find no unreasonable behaviour in this respect. Likewise, while I note the Council's concerns in regard to the curtilage, my decision on the substantive appeal makes clear that I do not agree that it exceeds that permitted under Class Q.
7. Consequently, I find that the appellant has merely put forward his case and sought to establish compliance with the Order. Accordingly, I find no unreasonable behaviour on their part and consider an award of costs in this instance would not be justified.

Application B

8. In Application B, the appellant essentially relies on the Council having behaved unreasonably in refusing the application and an alleged lack of engagement in the way in which it was determined. The PPG indicates that Local Planning Authorities will be at risk of an award of costs being made against them if, amongst other things, they prevent or delay development which should clearly be permitted or where a more helpful approach would probably have resulted in the appeal being avoided altogether.
9. A single reason for refusal was given¹. However, in formulating its refusal reason the Council pointed to three distinct areas in which they considered the application to be deficient. Firstly, that it failed to demonstrate that its use was solely agricultural; secondly, that the work involved went beyond what was reasonably necessary; and thirdly, that the proposed curtilage was too large.
10. My decision makes clear that I agree with the Council on the first and second points. It therefore follows that the suggestion that the Council has delayed or prevented development unnecessarily is without foundation. Furthermore, while it is incumbent on the Council to take a positive approach to cooperation, this does not extend to a duty to help formulate an applicant's case. Indeed, it is for an applicant to demonstrate, with evidence, that the qualifying criteria for permitted development under Class Q have been met. In this case, I have reached the conclusion that the appellant has not done so. Accordingly, I do not consider the Council to have acted unreasonably in refusing the applications on that basis or that a different approach would have resulted in the appeal being avoided or the issues significantly narrowed.
11. The appellant has also pointed to an attempt by the Council to introduce a new reason for refusal. The PPG makes clear that where a new reason for refusal is

¹ ie, that the proposal did not comply with the requirements of the Order.

introduced at appeal stage, this may result in a costs award against the Council. However, in this instance, I accept that the Council's reference to Paragraph Q.1(e) of the Order is put forward in support of their position on curtilage as opposed to any attempt to introduce a new reason for refusal. I do not therefore consider this to amount to unreasonable behaviour on the part of the Council in this instance.

12. While I note the appellant's assertion that the appeal could have been avoided in totality if the local planning authority has sought further information or clarification, it appears to me that there is no obligation on them to do so as part of an application under Class Q of the Order and, ultimately, the application fails on a lack of evidence. A refusal on this basis does not in my view amount to unreasonable behaviour. I do not, therefore, consider there to be sufficient justification to make an award of costs in this instance.

Conclusion

13. For the reasons set out above, I conclude that both Application A and Application B for costs should be refused.

Rory Cridland

INSPECTOR