
Costs Decision

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 in relation to Appeal Ref: APP/D0840/W/16/3156830 Homefield, Tremar Coombe, Liskeard PL14 5EG

- 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 & Mrs A & P Bates.
 - The appeal was against the refusal of planning permission for a change of use from agricultural building to dwelling.
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Decision

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

Reasons

2. 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.
3. The application essentially relies on the fact that the appeal had no reasonable prospect of success. 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. Furthermore, it advises that an 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.
4. The substantive appeal was essentially decided on the strength of the evidence presented. While I found that, due to a lack of information, I could not be satisfied that the proposal would comply with the requirements of the Order¹, 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.
5. The appellant's argument that the two buildings were joined by the holding yard was cogent, if not convincing. Their proximity and accessibility clearly indicated a shared purpose and maintaining that they should be treated as one is not in my view unreasonable. As such, I do not consider it to have had no reasonable prospect of success or the appellant to have acted unreasonably in putting it forward as a basis of the appeal.

¹ Town and Country Planning Act (General Permitted Development) (England) Order 2015.

6. However, my decision makes clear that I agree with the Council that the extent of the curtilage proposed is in excess of that permitted by the Order. Furthermore, I consider the definition of *curtilage* in Paragraph X of the Order to be unambiguous. It appears to me that even if the proposal been compliant with the Order in all other respects, it would still have fallen outside the ambit of Class Q due to the excessive size of the curtilage proposed. It appears to me that the appellant's argument that the Order imposed no such requirement had no reasonable prospect of success. In this respect, I find that the appellant has acted unreasonably.
7. Nevertheless, an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In this case, the Council has not put forward any clear or specific expenses which relate to this appeal process. I acknowledge that in responding to the appeal, the Council will have had to expend additional time in dealing with the curtilage point. However, in doing so, I do not consider it to have required anything more than a restatement of the reasons for refusal. In my view, the additional work involved is 'de minimus' and the Council has quickly dealt with this matter without the need to spend any additional time or incur additional costs.
8. As a result, although I conclude that the appellant acted unreasonably in maintaining an argument that had no reasonable prospect of success, I find this has not resulted in any material waste of expenditure.

Conclusion

9. For the above reasons, I conclude that an award of costs is not justified.

Rory Cridland

INSPECTOR