

Costs Decision

Site visit made on 12 December 2016

by K R Saward Solicitor

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

Decision date: 5 January 2017

Costs application in relation to Appeal Ref: APP/J0405/X/16/3150189 Dunton Road, Stewkley, Buckinghamshire LU7 0LU

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr William Doherty for a full award of costs against Aylesbury Vale 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 a certificate of lawful use or development for the proposed conversion of an agricultural building to 3 residential dwellings.
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Decision

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

Reasons

2. Paragraph 030 of the *Appeals* section of the Planning Practice Guidance (PPG) 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.
 3. The appellant seeks a substantive award of costs on the basis that the Council failed to confirm that the proposed conversion of an agricultural building to three residential dwellings had deemed consent following its purported refusal of prior approval which was given out of time.
 4. Under the prior notification procedure pursuant to Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 the Council had 56 days after receipt of the application in which to decide whether prior approval was required. The application was validated on 16 December 2015 and the Council Officer confirmed in a letter dated 18 December 2015 "If I have not sent you a decision by 10th February the Change of Use may go ahead".
 5. The Council purported to refuse prior approval by a decision dated 11 February 2016. It accepts that this was sent out-of-time. In itself this falls short of amounting to unreasonable behaviour. The dispute that followed resulted from this late notification. The appellant maintained that the proposal had deemed consent. On the other hand, the Council claimed that the proposal could not be permitted development due to non-compliance with certain limitations and restrictions in paragraph Q.1.
 6. What the Council's letter did not make clear is that in order to benefit from
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deemed consent, the proposal must be within the scope of permitted development i.e. it must comply with all the restrictions set out in Q.1. As set out in my appeal decision, the Council was incorrect to assert that the existing floor space exceeds the threshold of 450sqm within paragraph Q.1.(b) of the GPDO. However, I have found on the information available that the proposal is nonetheless outside the limitations in paragraphs Q.1.(a),(h) and (i). For those reasons, it has not been demonstrated that the proposed development benefits for deemed consent so as to be lawful. With that in mind, the Council was justified in declining to confirm that the development could proceed.

7. The Council's letter of 18 December 2015 was misleading by confirming that development could go ahead if no response was received by the specified date without making it clear that this was the position if the proposal was within the scope of Class Q. It thereby created the risk of the appellant relying upon the statement in circumstances where the development would not have been lawful.
8. As it happens, the Council clarified the position in subsequent telephone calls, emails and letters, as referenced by the appellant. The appellant was thus well aware of the Council's view that there was no deemed consent and its reasons. The appellant was of the firm belief that the Council officer was wrong despite the repeated explanation and considered her to be taking a 'belligerent stance' which was contrary to the Council's normal position. If, in those other cases, the development was within the scope of permitted development then a failure to issue a decision in time would have resulted in a deemed consent. It does not mean there is deemed consent in this case. Furthermore, there is no requirement for a Council to say if there is deemed consent. An appeal is always a difference of opinion between the parties and it does not automatically follow that one party is acting unreasonably.
9. From the evidence, I consider that the Council took reasonable steps to clarify the situation created by its misleading letter. The Council also acknowledged that its refusal of prior approval had been issued too late. In those circumstances the Council's conduct would not warrant an award of costs.
10. It is unfortunate that the Council failed to determine the appellant's subsequent application for a Certificate of Lawfulness within the prescribed period, but a failure to do so is provided for by the legislation. There are consequences for the failure. When submitting the appeal, the appellant knew the Council's stance having received details in the previous late notice of refusal and having engaged in exchanges with the Council Officer. The officer's delegated report for the prior notification was also available. It was clear from the Council's Appeal Statement that had it made a decision, it would have refused the application. Even if it had issued a decision, the appeal would not have been avoided. Furthermore, I have found that a decision to refuse the application would have been well-founded.
11. The Council accepts that it did not respond to all emails and letters, but there is no clear evidence before me that this resulted in unnecessary or wasted expense in the appeal process.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

KR Saward INSPECTOR