
Costs Decision

Site visit made on 20 December 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 24 January 2017

Costs application in relation to Appeal Ref: APP/D3830/W/16/3156030 Great Wapses Farm, Hurstpierpoint Road, Henfield BN5 9BJ

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jonathan Bodansky for a full award of costs against Mid Sussex District Council.
 - The appeal was against the refusal of planning permission for development described in the application form as the 'erection of 1 new build dwelling; in the alternative to permission granted under DM/15/4411, 'change of use from agricultural building to 1 dwelling''.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out that costs may only 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.¹
3. The appellant's case for a full award of costs is primarily in relation to a substantive issue, i.e. the weight given by the Council to a fall-back position in reaching a decision, and secondarily in relation to procedural matters regarding the Council's handling of the application.
4. The proposal to which appeal Ref APP/D3830/W/16/3156030 relates was for a differently designed dwelling in place of that which was permitted by the Council via permission Ref DM/15/4411 (the '2015 permission'). The 2015 permission granted prior approval for the conversion of an agricultural building to a dwelling via permitted development.
5. As explained within paragraph 14 of the appeal decision, proposals brought forward via permitted development rights engage different planning considerations than applications for planning permission. The Council's officer report associated with the appeal proposal considers in detail the scheme to which the appeal relates relative to that permitted, including in respect of matters of design.

¹ Reference ID: 16-030-20140306.

6. There is correspondence before me from the Council to the appellant dated 18 July 2016 which sets out that as there is no planning permission to demolish the existing barn to which the 2015 permission relates and to erect a new dwellinghouse, in the Council's view there 'is no fall-back position for a new building on the site'.² Whilst this is an overly-simplistic summary of the situation, and whilst I have arrived at a different position regarding appropriateness of the development proposed, it is not incorrect given the differences between the appeal scheme and the 2015 permission.
7. I would further note that a comparison between the appeal scheme and the 2015 permission is complex given the ambiguity as to the appeal site within the plans supporting the application (as referred to in paragraphs 3 and 17 of the appeal decision). Therefore for this reason, and given the clear differences between the scheme advanced at appeal and the 2015 permission, it cannot be said that the Council acted unreasonably in objecting to the proposal in application Ref DM/16/1940 having taken account of the 2015 permission.
8. There is information before me provided by the appellant regarding the Council's procedural handling of the application. This appears to relate to whether information related to the application was displayed at the correct juncture and referenced with the correct status on their publicly-accessible website. Whilst I have noted this information there is no indication that the Council's procedural handling of the application unduly influenced their approach in respect of the merits of the proposal, and as such it cannot be said that costs have directly resulted as a consequence.
9. For the above reasons, and having taken account of all other matters raised, I am not of the view that unreasonable behaviour resulting in unnecessary expense has been demonstrated. I therefore conclude with reference to the approach in the Guidance that an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR

² I note that within previous correspondence in this context the appellant makes reference to a different appeal, Ref APP/R3650/W/15/3133244, and to guidance produced by Wealden District Council related to the conversion of agricultural buildings to dwellings. For the avoidance of doubt these documents are of limited relevance, being in the first instance for differently designed development within a different local planning authority's administrative area compared to the scheme advanced by the appellant at appeal, and in the second instance in being a different local planning authority's guidance document with no wider geographic applicability.
