
Costs Decisions

Site visit made on 16 January 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 31 January 2017

Costs application A in relation to Appeal Ref: APP/C3105/W/16/3160946 Field Barns, Whichford Road, Hook Norton, Oxfordshire

- 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 Ms J Taylor for a full award of costs against Cherwell District Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for change of use of 3 barns to 3 dwellings including operational development.
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Costs application B in relation to Appeal Ref: APP/C3105/W/16/3160946 Field Barns, Whichford Road, Hook Norton, Oxfordshire

- 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 Cherwell District Council for a full award of costs against Ms J Taylor.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for change of use of 3 barns to 3 dwellings including operational development.
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Decisions

1. Application A for an award of costs is partially allowed, in the terms set out below.
2. Application B for an award of costs is refused.

Reasons

3. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Application A

4. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a failure to adhere to deadlines. In addition, substantive matters include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Other substantive matters include the failure to produce
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evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Unreasonable behaviour also includes not determining similar cases in a consistent manner.

5. Ms J Taylor's application for costs (Application A) broadly relates to both the procedural and substantive matters listed above in so far as they are relevant to the interpretation of the GPDO¹. The procedural matter relates to the failure of the Council to determine the application within the 56 day period set out under Schedule 2, Part 3, paragraph W of the GPDO². With regard to substantive matters, Ms J Taylor contends that the Council failed to take into account information submitted prior to making its decision; specifically a structural report dated 28 January 2016 and revised plans³. Ms J Taylor asserts that this resulted in a planning appeal which could have been avoided and that the Council have subsequently failed to substantiate the reasons for refusal as part of the appeal. Ms J Taylor also states that the Council has been inconsistent in decision making relating to Class Q of the GPDO and provided a number of other recent Council decisions as evidence.
6. With respect to the procedural matter, there is no substantiated evidence before me that the original application failed to meet the requirements of Schedule 2, Part 3, paragraph W(2) of the GPDO after the application fee was received on the 12 February 2016. Consequently, the application should not have been made invalid after that date. Paragraph W(3)(b) of the GPDO permits a local authority to refuse an application on the basis of insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development. If the Council considered that the application did not contain sufficient information to make a decision, notwithstanding the requirements of paragraph W(2) having been met, the application should alternatively be refused under paragraph W(3)(b) of the GPDO rather than made invalid.
7. With regard to the above, a decision made on the 18 April 2016 was, therefore, outside of the 56-day deadline for the Council to notify the applicant as to whether prior approval is given or refused set out in paragraph W(11) of the GPDO. However, the effect of the deadline only precludes the Council's ability to make a determination on matters of prior approval under the GPDO. Furthermore, such circumstances are dependent upon whether the proposal would be permitted development under Class Q. It will be seen from my appeal decision that I concluded that the proposal would not be permitted development under Class Q. Consequently, the Council delay in determining the application arising from it incorrectly being made invalid, constitutes unreasonable behaviour, but did not result in unnecessary or wasted expense for Ms J Taylor in the appeal process.
8. Turning to substantive matters, the Council's reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. Both reasons for refusal clearly identify the paragraphs within the GPDO considered to be relevant to the decision. However, the Council subsequently withdrew the first reason for refusal relating to insufficient information to

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

² Town and Country Planning (General Permitted Development) (England) Order 2015

³ Drawing number 5988-05a dated 12 April 2016 and a site location plan dated 18 April 2016

- demonstrate compliance with Schedule 2, Part 3, Class Q, paragraphs Q.1(a)-(f), (h) and (j) - (m) of the GPDO, following a separate prior approval application granted for a different proposal relating to Barn 1 only.
9. With regard to the above, the Council have confirmed that a structural report and revised plans, submitted by Ms J Taylor and relating to compliance with Schedule 2, Part 3, Class Q, paragraphs Q.1(a)-(f), (h) and (j) - (m) of the GPDO, were not brought to the attention of the team leader in making the decision or uploaded to the Council's website. Whilst such circumstances are reflective of procedural error rather than intention, the failure to consider evidence before the Council in making its decision was, nevertheless, unreasonable. Based on the evidence before me, it is reasonable that if the Council would have had regard to the revised plans submitted prior to the decision, then the first reason for refusal would not have been included.
 10. The unreasonable behaviour in failing to take account of the structural report and revised plans in making the decision has been worsened by the subsequent delay in resolving the matter with Ms J Taylor. The Council's team leader was contacted by e-mail on 12 September 2016 which notified of Ms J Taylor's intention to appeal and to enquire whether in the circumstances; the Council would wish to withdraw the first reason for refusal. A response from the Council's team leader was only provided on 13 October 2016, which I consider to be an unreasonable delay, notwithstanding any backlog of workload arising from a prior period of annual leave. The delay did result in unnecessary or wasted expense incurred by Ms J Taylor in the appeal process as a result of having to contest the Council's first reason for refusal. The wasted expense identified is specific to the preparation of Ms J Taylor's statement of case relating to the first reason for refusal.
 11. The Council's second reason for refusal has been substantiated by evidence given my reasoning in the appeal decision and resultant conclusion that the proposal would not be permitted development. I, therefore, cannot conclude that the Council has behaved unreasonably with respect to preventing or delaying development which should clearly be permitted. Consequently, there has been no unnecessary or wasted expense incurred by Ms J Taylor in relation to the Council's second reason for refusal.
 12. It will be seen from my appeal decision that I consider that the other prior approval applications before me relating to Class Q of the GPDO granted by the Council, have differences to the proposal. The differences include the timing of the decisions preceding the Hibbitt High Court judgement⁴, the individual circumstances of the agricultural buildings and the conversion works required. On that basis, I cannot conclude that the Council behaved unreasonably with respect to the requirement to determine similar cases in a consistent manner. Consequently, there has been no unnecessary or wasted expense incurred by Ms J Taylor in that respect.
 13. Having regard to the above, I consider that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated in respect of costs application A. However, it relates to specifically those costs involved in the appeal process in contesting the first reason for refusal up to its withdrawal on 13 October 2016.

⁴ Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

Application B

14. The PPG provides examples of unreasonable behaviour by an appellant which can be both procedural and substantive. The Council's application for costs (Application B), relates to a claim that the appeal had no reasonable prospect of succeeding.
15. The Council's case for Application B relates to an extension to Barn 1 which exceeded the criteria of Schedule 2, Part 3, Class Q, paragraphs Q.1(g) of the GPDO and was subsequently amended by Ms J Taylor through revised plans submitted as part of the appeal. The Council has also made reference to Ms J Taylor's structural report confirming that the curved roof to Barns 2 and 3 would need to be removed.
16. It will be seen from my appeal decision that in terms of Barn 1, the revised plans submitted by Ms J Taylor were considered given the consistency with a separate prior approval application granted by the Council. Although I disagree with Ms J Taylor's reasoning and supporting evidence that the proposal relating to Barns 1, 2 and 3 is permitted development, such a conclusion relates to matters of judgement and interpretation relative to Class Q of the GPDO. In this respect, the structural reports provided by Ms J Taylor are not explicit in terms of the specific works that would be necessary to facilitate the conversion. In such circumstances, and taking account of the extent of evidence provided by Ms J Taylor, I consider that the appeal was pursued based on differences of interpretation of the GPDO rather than an awareness of no reasonable prospect of it succeeding. I, therefore, find neither unreasonable behaviour of Ms J Taylor, nor unreasonable or wasted expense incurred by the Council in defending the appeal.
17. The Council raised additional concerns that Ms J Taylor relied upon surprise as a tactic in making its cost application. However, I am satisfied that both costs applications were made in accordance with the timescales set out in the PPG. Furthermore, an opportunity was provided to both parties to respond to the respective cost applications. As a consequence, I find neither unreasonable behaviour, nor unreasonable or wasted expense in that respect.
18. Having regard to all of the above, I consider that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated in respect of costs application B.

Conclusion

19. In terms of Application A made by Ms J Taylor against the Council, I have found that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated with respect to only the Council's first reason for refusal, which was subsequently withdrawn. I, therefore, conclude that a partial award of costs to cover the expense incurred by Ms J Taylor, specifically those costs involved in the appeal process in contesting the first reason for refusal up to its withdrawal on 13 October 2016, is justified with respect to Application A.
20. In terms of Application B made by the Council against Ms J Taylor, I conclude that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for the award of costs made by the Council is, therefore, refused.

Costs Order

21. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cherwell District Council shall pay to Ms J Taylor, the costs of the appeal proceedings described in the heading of this decision (listed under Costs application A) limited to specifically those costs involved in the appeal process in contesting the first reason for refusal up to its withdrawal on 13 October 2016; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
22. Ms J Taylor is now invited to submit to the Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gareth Wildgoose

INSPECTOR