
Costs Decision

Site visit made on 18 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 22nd February 2017

Costs application in relation to Appeal Ref: APP/J1915/W/16/3160281 Swallowfield Farm, Church Road, Epping Green, Hertfordshire SG13 8NB

- 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 Bradley Morgan for a full award of costs against East Hertfordshire 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 the change of use of agricultural building to provide 1 No. dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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. Unreasonable behaviour described in the PPG can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. Paragraph 49 of the PPG provides examples of the types of behaviour which might give rise to a substantive award of appeal costs against a local planning authority. This application refers to a number of these examples.
 3. In the appeal, the appellant had provided evidence to demonstrate that the building had been in use for agricultural purposes and formed part of an established agricultural unit on 20 March 2013. In addition to the appeal statement and the report accompanying the original prior notification application, there was a further statement covering the agricultural use of Swallowfield Farm and statutory declarations from both the appellant and an immediate neighbour.
 4. The Council had relied on its delegated report and had not provided a separate appeal statement. Whilst in principle this might be acceptable practice the delegated report provides little of substance to dispute the evidence provided by the appellant. There is some doubt expressed by the Council over how the building was used on the relevant date. However, this relates to the statement accompanying a separate planning application for the bee keeping equipment store referring to the accommodation of disabled visitors. The terms of the enforcement notice had allowed the retention of some staff facilities and the appellant's statutory declaration refutes that there had been any use for
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educational purposes. Council has relied here on no substantial evidence to suggest the use was not agricultural.

5. The Council's concern over the building not lending itself to an agricultural use and retaining a residential feel provides little to substantiate it not being in agricultural use on the relevant date. The evidence suggests to me that these all relate to the nature of the building originally allowed, the terms of the enforcement notice and the recent unauthorised use as a dwelling, rather than any firm evidence that it was not in agricultural use.
6. I agree with the appellant that there was no need to demonstrate the economic viability or profitability of the farm and so the Council has little evidence to substantiate its concern over whether the building was being used for agriculture as a trade or business. On the basis of the above, there is a clear failure of the Council to substantiate its reason that insufficient evidence had been submitted to demonstrate the building was in agricultural use for the purpose of a trade or business on an established agricultural units on 20 March 2013. With reference to paragraph 49 of the PPG this would be unreasonable behaviour in a substantive sense.
7. Pending the outcome of judicial view, the Council has also acted unreasonably in a substantive sense by not determining this appeal in accordance with other appeal decisions, including a number in this District, where Inspectors have clearly followed the advice in paragraphs 108 and 109 of the PPG in respect of not applying a test in relation to the sustainability of the location of Class Q proposals and applying Government's definition of what would be impractical or undesirable. The Council has not provided any recent appeal decisions which support the approach it has taken in this appeal. With reference to the sixth example given in paragraph 49 of the PPG the Council has therefore behaved unreasonably by persisting in the refusal of a Class Q proposal on the grounds of location, where several Inspectors have previously indicated similar cases to be acceptable.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and conclude that a full award of costs is justified.

Costs Order

9. 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 East Hertfordshire District Council shall pay to Mr Bradley Morgan the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to East Hertfordshire District Council, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Price

INSPECTOR