
Costs Decision

Site visit made on 27 February 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 8 March 2017

**Costs application in relation to Appeal Ref: APP/P1133/W/16/3163943
Land north of Shameface Lane, Hennock, Bovey Tracey, Devon TQ13 9QH**

- 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 S Curtis for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of a building and land in B8 use (storage or distribution) to a C3 use (dwellinghouse).
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Decision

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

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 on substantive grounds, and is essentially that the Council misinterpreted the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO') in refusing permission, and thereby prevented development that should clearly have been permitted.²
4. The main issue in the appeal was whether or not the change of use proposed was permitted development via Schedule 2, Part 3, Class P of the GPDO, with particular reference to the extent of the residential curtilage proposed.
5. The Council refused permission via decision notice dated 20 October 2016 on the basis that the vehicular access to the appeal site was not included within the land identified as proposed residential curtilage. In their view had the

¹ Reference ID: 16-030-20140306.

² With particular regard to Guidance Reference ID: 16-049-20140306.

access been included within the appeal site the extent of curtilage proposed would exceed the footprint of the building in conflict with Schedule 2, Part 3, paragraph P.3(b) of the GPDO.

6. I established within the appeal decision that 'curtilage' and 'access' are separate and distinct terms as referred to within the GPDO (at Schedule 2, Part 3, paragraph P.3 and at Schedule 2, Part 2, Class B thereof respectively). I also explained that the definition of curtilage within Class P, essentially land 'immediately beside or adjacent' would not logically apply to many vehicular accesses to storage or distribution facilities, or indeed that accesses may be described as such at certain points but not at others. There is furthermore no explicit requirement within the GPDO for access to be included within curtilage proposed for the purposes of Class P.
7. My reasoning in these respects is consistent with the inspector who determined appeal Ref APP/P113/W/16/3156167, which is the further information referred to by the Council in their correspondence at appeal dated 1 February 2017 which resulted in their withdrawing their original reason for refusal. However, as mentioned within the appeal decision, my reasoning in this respect was arrived at independently of that appeal as was based on a logical application of the provisions of the GPDO.
8. I accept that Class P permitted development rights came into force only on 15 April 2015, and therefore there was comparatively limited existing practice before the Council as a point of reference in determining application Ref 16/02427/NPA. I also acknowledge that the Council based their approach in part on two prior approval appeals, Ref APP/H0928/W/15/3005842 and APP/X0415/W/15/3137742.
9. However the circumstances relevant in those appeals are not directly comparable with those relevant to the appeal to which this costs decision relates; in the former case the proposal was in relation to Class Q of the GPDO where existing access arrangements were acknowledged to be unsuitable, and in the latter the appeal turned on the highways effects of the proposal given that no provision for off-road parking was available.
10. I note within the appeal decision that, given the rural location of the appeal site and the likely reliance of future residents on the use of private vehicles, it is understandable for the Council to have sought clarification in relation to matters of vehicular access and space available for parking and manoeuvring in order to ascertain whether adverse highways effects would arise with regard to Schedule 2, Part 3, paragraph P.2 of the GPDO.
11. Nevertheless the Council's reason for refusal within their decision notice is solely based on whether the curtilage proposed would be compliant with the provisions of Schedule 2, Part 3, paragraph P.3 of the GPDO. Moreover the land in which the appeal site falls, which is within the same ownership as the appellant, already benefits from a vehicular access and parking and manoeuvring space in connection with the extant B8 use thereof, in relation to which there is no objection to the use thereof on safety grounds from the

Council. Therefore given the nature of the appeal site and its surroundings, I explained that the absence of detail in respect of access, parking and manoeuvring in support of the proposal would not lead to adverse highways impacts.

12. In this context I cannot therefore conclude other than that the Council acted unreasonably. Their opposition to the development, whilst consistent with their position in respect of two previous proposals in respect of the appeal site, was not based on a clear and logical interpretation of the provisions of the GPDO and was not supported by sufficiently robust evidence as to the adverse highways effects that they considered would arise with reference to the nature of the appeal site. In this context it appears that the appellant was left with no other option than to pursue an appeal.
13. Although the appellant has not precisely defined or enumerated the type or extent of unnecessary or wasted expense that he has incurred as a result of pursuing the appeal, the Guidance explains that costs may include the time spent by appellants and agents in preparing for an appeal, and clearly some time was expended by the appellant in this regard.³ The Guidance furthermore establishes that is the purpose of a costs order to state the broad extent of the expense the party can recover from the party against who the award it made rather than determining the actual amount.⁴
14. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated, and that a full award of costs is justified in this instance in line with the approach in the Guidance.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Teignbridge District Council shall pay to Mr S Curtis 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.
16. The applicant is now invited to submit to Teignbridge District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Bristow

INSPECTOR

³ Reference ID: 16-032-20140306.

⁴ Reference ID: 16-027-20140306.