

Costs Decision

Site visit made on 13 March 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 3rd April 2017

Costs application in relation to Appeal Ref: APP/T0355/W/16/3163513 Pump House, Kennel Lane, off Whyteladyes Lane, Cookham, Maidenhead, Berkshire

- 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 Copas Farms for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of a prior approval application for conversion of an agricultural building to one residential house.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises 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.
 3. Officers prepared a report assessing the proposed conversion of an agricultural building into a house against the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The report concluded that the proposal was permitted development that required prior approval in relation to the conditions set out in paragraph Q.2 of the GPDO.
 4. The officer's report dealt, albeit briefly, with all the relevant conditions and concluded that the proposal complied with them. The report also confirmed that the provisions of paragraph W (prior approval) had been discharged and addressed the issues that had been raised by consultees at the time the report was written. On the basis of this assessment the officers recommended that prior approval should be granted.
 5. However, the matter was not dealt with under delegated powers following a request from a Member to refer the matter to the Maidenhead Panel for determination. Consequently, and in the light of a significant number of additional objections which appear to have been received after the officer's report had been completed, the application was refused, in part because of concerns about the effects of the proposal on the Green Belt.
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6. It is notable that within the officer's report there is a complete absence of reference to the PPG's advice in relation to the conversion of agricultural buildings to dwellings. This is regrettable, as the PPG's advice in relation to the location and siting of the building and its expansion of the meaning of 'impractical' and 'undesirable' is of particular relevance to this case. The only mention of the Green Belt in the report was a passing reference to a letter of objection, where it was simply stated that it was not a relevant consideration.
7. The update which was presented to the Panel summarised an additional 23 objections, but did not expand on the reasons as to why the Green Belt was not a consideration in this type of application. It is therefore not entirely surprising that Members were reluctant to support the recommendation. However, in doing so they raised a number of issues that were not relevant to the assessment of a scheme under the requirements of the GPDO.
8. The appellant's statement provided some detail of what was said by Members at the Panel's meeting, but did not give any information about additional advice that may (or may not) have been provided by the officers at that time. The evidence before me did not suggest that officers provided any additional explanation of how the terms 'impractical' or 'undesirable' have been interpreted following the updating of the PPG's guidance in 2015. Consequently, it appears that the Members refused the application without being fully aware of national guidance.
9. The Council's appeal statement largely focused on the undesirability of the proposal because of its location in the Green Belt and in the open countryside, even though it was aware that location was not a sufficient reason for refusing prior approval. It sought to demonstrate that the scheme was undesirable because of its effects on various unfounded suggestions, such as harm to users of the footpath alongside the site. These were not reasons that were likely to be sustained, particularly in the light of appeal decisions which have been issued in accordance with the updated advice of the PPG.
10. Whilst Members are not obliged to accept the recommendation of their officers, they must be able to demonstrate reasonable planning grounds for taking a different view and support their decision with relevant evidence on appeal. However, the Council's statement refers to the isolated location and siting of the building and continues to suggest that this would be contrary to condition Class Q (1)(e). It made repeated reference to the Green Belt and the National Planning Policy Framework (the Framework) but no reference to the PPG.
11. In my view this amounts to unreasonable behaviour based on vague, generalised assertions about the proposals impact without reference to the legislation and government advice that was relevant to this case. Consequently, the Council's decision has delayed development which should have been permitted, having regard to the provisions of the GPDO.
12. The decision left the appellant with no other option than to pursue the appeal. In support of his case he has provided detailed evidence showing compliance with the GPDO and has referred me a number of other cases which were relevant to the proposal. In doing so he has incurred costs.
13. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and an award of costs is justified.

Costs Order

14. 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 the Council of the Royal Borough of Windsor and Maidenhead shall pay to Mr Geoffrey Copas, 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.
15. The applicant is now invited to submit to the Council of the Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sheila Holden

INSPECTOR