
Costs Decision

Site visit made on 21 March 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 07 April 2017

Costs application in relation to Appeal Ref: APP/T3535/W/16/3162126 Fermoy Store, Jay Lane, Lound, Lowestoft, Suffolk NR32 5LH

- 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 David Glayzer for a full award of costs against Waveney District Council.
 - The appeal was against the refusal to grant planning permission under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 for change of use of pole barn to the rear from agricultural barn to residential.
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Decision

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

The Case Made by Mr David Glayzer and the Response by Waveney District Council

2. The appellant says that the Council prevented or delayed development which is clearly permitted by Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). The Council failed to substantiate its reason for refusal or sufficiently explain its reasoning for its approach to defining a building. Furthermore, the Council has tried to introduce a second reason for refusal in respect to the structural soundness of the building. The Council has therefore acted unreasonably and a full award of costs is justified.
3. The Council states that it does not regard it as unreasonable to refuse prior notification in a case where an applicant has applied to alter a structure that is a major reworking of the original building. Thus there should be no award of costs made against it.

Reasons

4. Paragraph 030 of the Planning Practice Guidance (the Guidance) (*reference ID: 16-030-20140306*) 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. Paragraphs 047 and 049 of the Guidance (*references ID: 16-047-20140306 and 16-049-20140306*) state that local planning authorities are at risk of an award of costs if they prolong the proceedings by introducing a new reason for refusal, or behave unreasonably by, amongst other things, failure to produce evidence to substantiate each reason for refusal.
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5. The Council refused the appeal scheme on one ground, finding that the pole barn was a structure and not a building, thus it fell outside the scope of Class Q(a) of the GPDO. In reaching this decision, the Council chose to ignore the definition of a building as defined in Article 2(1) of the GPDO, which defines a building as including any structure, and instead relied on that prescribed in the Oxford English Dictionary. The Council gave no reasoned explanation for this approach or why it considered the legal definition for the purposes of Class Q(a) of the GPDO did or should not apply. The Council, I found, had no sound basis for doing so. This was an act of unreasonable behaviour which has led to wasted expenditure for the appellant in pursuing the appeal.
6. The Council's appeal statement advanced further objections to the scheme by suggesting that the appeal also failed against Class Q(b) of the GPDO in that the scope of works fell outside of, and went above and beyond what was reasonably necessary to undertake a residential conversion. While mention of this was made in the officer's report, it did not form any part of the reason for refusal. But because the issue of structural soundness was raised by the Council, even late in the day, I was required to make a finding on the matter in my decision. Ultimately, the absence of a structural survey to demonstrate soundness of the pole barn to be reasonably converted proved determinative.
7. I do not find the Council's questioning of the structural soundness of the pole barn was unreasonable, indeed having regard to the requirements Class Q.1(i) of the GPDO and Paragraph 105 of the Guidance, it was right to do so. However, to effectively introduce its concerns at appeal stage is, I find, tantamount to the tabling of a second reason for refusal. I find this also amounts to unreasonable behaviour on the Council's part, which effectively denied the appellant the time and opportunity to adequately address this issue at appeal, and it led to additional and unplanned costs for the appellant in being required to provide an additional response on this matter.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and 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 the Waveney District Council shall pay to Mr David Glayzer, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Waveney 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R Allen

INSPECTOR