The Planning Inspectorate

Costs Decision

Site visit made on 6 February 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 10 April 2017

Costs application in relation to Appeal Ref: APP/J1915/W/16/3161241 Holborn Farm, West End Road, Wormley, Wormley West End, Hertfordshire EN10 7QN

- 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 Adam Hunt for a full award of costs against East Hertfordshire District Council.
- The appeal was against the refusal to grant approval under Section 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 for subdivision and conversion of agricultural building into one single occupancy dwelling (Class C3) and associated alterations to elevations.

Decision

1. The application for an award of costs is refused.

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. The application for costs seeks a full award on substantive grounds[1].

3. The appellant stated that the Council was unreasonable and the refusal was unnecessary as the prior approval application accorded with the relevant provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015 (GPDO), in particular the interpretation "impractical" and "undesirable" at condition (e) of paragraph Q.2(1)(e) of the GPDO and the provisions of the PPG.

4. In this case, in light of the fact that the submissions made at the application stage took place prior to the recent High Court case[2], I consider that the reason for refusal was adequately substantiated by the Council in its officer report. I found the officer report to be comprehensive and to clearly articulate why the proposal would not, in the Council's opinion, satisfy the contested condition for prior approval.

5. Notwithstanding the findings of the Court, the Council presented a cogent case at both the application and appeal stages as to why it considered prior approval was required. The Council referred to extracts from case law and other

[1] Planning Practice Guidance: Paragraph 049 Reference ID 16-049-20140306
[2] East Herefordshire DC v SSCLG [2017] EWHC 465 (Admin)

material, including legal advice, which was provided to support its view that the chronology of revisions to the GPDO and PPG against the backdrop of the National Planning Policy Framework (the Framework) may allow for interpretation that it applied.

6. The Council produced a full response to this costs application which again clearly set out the Council's position including its interpretation that there was a contradiction between the Framework and the PPG in relation to the new dwellings in the countryside when considering the provisions of Class Q of the GPDO 2015. The Council response also referred to an appeal costs decision where the same issue was considered and the costs appeal was refused[3].

7. In addition, the appellant argued that the Council failed to fully take into account the previous appeal decision on the same appeal site[4] and the Council's decision on a similar development for change of use of an agricultural building to residential use in the area[5]. This appeal decision and Council decision was acknowledged in the Council officer's report and the Council response to this cost application was such that I am satisfied that they had been taken into consideration. However, it is important that each proposal should be determined on its own merits including its particular location.

8. It is seen from my decision that I disagree with the approach taken by the Council. However, prior to the recent High Court decision, the Council was entitled to form its own views about the accessibility of development having regard to all the evidence and other matters raised. Accordingly, I consider that the Council was able to substantiate its decision at the time and cannot agree that the Council acted unreasonably in this case.

9. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense which would lead to an award of costs, as described in the PPG, has not been demonstrated.

David Troy

INSPECTOR

[3] APP/R3650/W/15/3140675
[4] APP/R3650/W/15/3095770
[5] 3/15/1854/ARPN