The Planning Inspectorate

Costs Decision

Site visit made on 28 March 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 12 April 2017

Costs application in relation to Appeal Ref: APP/J3530/W/17/3166437 Barn A, Land adjacent former Wood Barn Cottages, Seckford Hall Road, Great Bealings, Suffolk IP13 6NX

- 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 Seckford Cottage Co Ltd. for a full award of costs against Suffolk Coastal District Council.
- The appeal was against the refusal of the Council to grant approval required under a development order.

Decision

1. The application for a full award of costs is refused but a partial award of costs is allowed.

Procedural Matter

2. The Council has not provided a rebuttal of the application for costs but I have based my reasoning on the evidence before me. I appreciate the appellant's point that a failure to provide evidence strengthens the appellant' case, but nonetheless I have weighted my reasoning in accordance with the information supplied.

Reasons

3. The national Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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.

4. The appellant applied for prior approval for the conversion of an agricultural building into a dwelling, under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GDPO).

5. The application was refused on the grounds that the works required would be more than building operations reasonably required for the building to function as a dwellinghouse. There was also a concern raised in relation to drainage.

6. The appellant argues that the Council has acted unreasonably as a consequence of failing to issue a valid decision notice, raising an objecting to an element found acceptable by other Inspectors, inconsistency in the determination of cases, refusing an application on grounds capable of being

dealt with by condition, failing to substantiate its case at appeal and an error of law. I will deal with each of these in turn.

Failure to issue a decision notice

7. In my decision notice I have explained why I consider the Council's decision notice to be valid, notwithstanding the late notification of reasons. Although I appreciate that the Council's response to the appellant's request for reasons for refusal was dilatory, I am not satisfied that this renders the decision invalid or constitutes unreasonable behaviour sufficient to warrant an award of costs. The appellant reproduces the reasons for refusal in the appeal statement so the appeal was lodged in full knowledge of those reasons.

Persistent objection

8. I acknowledge that the appellant has submitted four appeal decisions as evidence to support the application, and these indicate that Inspectors for other appeals on other sites have concluded that stripping an agricultural building back to its frame is a reasonable operation under the provisions of the GDPO. However, the evidence before me indicates that the Council's concern[1] was primarily related to the extent of demolition and replacement. The delegated report states that the extent of demolition and rebuilding would go beyond the extent of works anticipated by the legislation. My decision has reached the same conclusion and whilst I appreciate that the legislation may allow the replacement of walls and roofs, there is nothing in the evidence before me to suggest that large scale demolition in order to allow a conversion to a dwelling is included in the works allowed under the permitted development rights.

9. The appellant has also raised a concern that the Council has relied on evidence submitted for a previous application for this barn in relation to structural issues, to assist in their determination of the application. However, on the basis of the delegated report I concur with the Council that there appears to be some inconsistency in the structural evidence submitted for this and the previous appeal, particularly as I did not notice evidence of new structural work at my visit.

10. It is not unreasonable for the Council to raise this concern, but I am not satisfied that the Council has relied solely on that inconsistency in its determination of the application, particularly as it is not mentioned in their statement of case.

Inconsistency and Condition

11. The appellant argues that the Council has not determined similar cases in a consistent manner, and gives specific instances of the approval of foul drainage systems on neighbouring land in the vicinity of the appeal site, as well as stripping back a barn to its structural supports.

12. The appellant refers to the first three Class Q submissions where foul drainage was not mentioned as a reason for refusal. In the absence of a reference to specific applications in the application for an award of costs, I

[1] Delegated report, Clause 15

presume this refers to earlier applications for barn conversions at the farmstead. The planning history contained within the Council's statement indicates that the reasons for refusal for the previous application for this barn also included an objection in relation to foul drainage, as did two applications for another barn at the farmstead. As such, I give this argument little weight.

13. I have outlined above that the Council's reasons for refusal relate to the scale of the demolition and replacement works. As I have reached a similar conclusion, I am not satisfied that the Council has acted unreasonably in this regard.

14. With regard to the foul drainage and condition, Section W (13) of Part 3 of Schedule 2 of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council maintains that the proposed curtilage of the development would be too small to contain a private drainage system. As the drawings contained in the evidence before me do not bear dimensions, I am unable to reach a conclusion on that point and the appellant has provided limited information in this respect.

15. However, I conclude that this issue could have been resolved by the imposition of a condition, were the appeal to be allowed. On this point I consider the Council has acted unreasonably.

Failure to substantiate the case

16. With regard to the foul drainage concern, I have addressed this in my reasoning above.

Error of Law

17. The appellant argues that the Council is mistaken in its use of the word 'convert'[2] and has relied on an interpretation of the word taken from local policy. However, Class Q (b) states that permitted development consists of building operations reasonably necessary to *convert* the building. The Council's reasons for refusal state that the works required (for the change of use) would be more than building operations reasonably required for the building to function as a dwelling house. As such, there is limited evidence before me that leads me to conclude that in refusing this application the Council has made an error or law or interpretation.

Conclusion

18. In the light of the above, I conclude that the Council has acted unreasonably with regard to the refusal on the grounds of the development's drainage arrangements. Although the application would still have failed to meet the criteria set out in the GDPO, there has been wasted expense during the appeal process in relation to the element of foul drainage.

[2] Council Statement of Case, Clause 5.1

19. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that therefore an award of costs is justified.

20. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Suffolk Coastal District Council shall pay to Seckford Cottage Company Ltd., the costs of the appeal proceedings *solely relating* to the issue of foul drainage; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to Suffolk Coastal 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.

Amanda Blicq

INSPECTOR