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## Costs Decision

Site visit made on 23 May 2017

**by Jonathan Tudor BA (Hons), Solicitor (non-practising)**

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

**Decision date: 29 June 2017**

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### **Costs application in relation to Appeal Ref: APP/J1915/W/17/3169858 Agricultural Barn to the east of Brickendon Lane, Brickendon, Hertfordshire SG13 8NR**

- 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 Tony Bly (Frontiers Developments Ltd) for a full award of costs against East Hertfordshire District Council.
  - The appeal was against the refusal of an application for to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for change of use of an existing agricultural barn from agricultural use to residential.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.<sup>1</sup>
3. The application for costs alleges that the Council refused permission on grounds that were unsound and ignored the criteria set out in Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO) and relevant national policy and guidance. On that basis it says that the Council has acted unreasonably and that, as a result, the applicant has incurred unnecessary costs in submitting the appeal and commissioning a structural report on the existing building, submitted with the appeal.
4. The PPG gives examples of the type of behaviour by the local planning authority which may be considered unreasonable. The list includes failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.<sup>2</sup>
5. There were four reasons for refusal detailed in the Council's decision notice. The fourth reason, relating mainly to whether the development would be in a sustainable location, was withdrawn on appeal. However, the Council advise

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<sup>1</sup> Paragraph: 030 Reference ID: 16-030-20140306

<sup>2</sup> Paragraph: 049 Reference ID: 16-049-20140306

that the original decision was prior to a High Court judgement in relation to the issue.<sup>3</sup> I have considered the remaining three reasons for refusal in more detail within the main appeal decision.

6. With regard to the first reason for refusal, the Council considered that insufficient information had been provided to establish that the building was in agricultural use and part of an established agricultural unit on or before the relevant date. The Council reached their view on the basis of site visits where there was no evidence of use and the absence of business records or other sufficient supporting evidence with the application. Although, I did ultimately find in favour of the applicant on the issue in the main appeal, additional information and documentation in the form of receipts had been submitted with the appeal. In any event, I would not describe the evidence presented as conclusive and I only reached a conclusion on the balance of probabilities. Therefore, I do not consider that the Council acted unreasonably in coming to its view.
7. The second reason for refusal concerned whether the proposed building operations exceeded those reasonably necessary to convert the building. The Council's view, detailed in their report, was that the extent of the proposed conversion works would result in a new building and go beyond a conversion. Whilst Q.1.(i) gives by implication an indication of the types of works that would be acceptable, it states that such works are to the extent reasonably necessary for the building to function as a dwelling house. Therefore, there is still a planning judgement to be made depending on the particular details of the case. I note that the Officer's Report, for example, refers to a new floor, presumably in relation to the suspended floor level, which is not specifically referred to in Q.1(i).
8. The appeal documentation was also supplemented by a structural report, which provided further information about the condition of the existing building and the feasibility of works likely to be required to adapt it. Therefore, although I came to a different conclusion, I do not consider that the Council's judgement amounts to unreasonable behaviour.
9. The third reason for refusal revolved around the issue of flood risk on the site. Whilst I agree that the proposal was in itself unlikely to increase flood risk, the Council Officer's Report and Appeal Statement make clear that, as the Environment Agency (EA) lacked modelling for the location, they relied on advice received from their Environment and Engineering section. That advice expressed concern about introducing a residential use in Flood Zone 3 in a location that was also at risk of surface water flooding. Ultimately, it was a matter of planning judgement as to whether the analysis and mitigation measures contained in the Flood Risk Assessment were sufficient to enable prior approval to be given.
10. I agree that the Councils reasoning could have been more specific in explaining why the FRA analysis and recommended mitigation was considered insufficient. However, given the proposed potentially vulnerable location and absence of EA modelling, and the extent of the necessary mitigation advice, overall, I do not consider that the Council behaved unreasonably.

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<sup>3</sup> Easts Herts v SSCLG [2017] EWHC 465 (Admin)

11. Accordingly, whilst I have fully considered the points made by the applicant, given the relatively complex nature of the issues in this case and the requirements of the prior approval procedure, I am not persuaded on the basis of the evidence before me that the Council has acted unreasonably. As such, I do not agree that the applicant was put to unnecessary or wasted expense.

**Conclusion**

12. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award is made.

*Jonathan Tudor*

**INSPECTOR**