
Costs Decision

Site visit made on 27 June 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 1 August 2017

Costs application in relation to Appeal Ref: APP/B1225/W/17/3168628 The Barn, Slepe Farm, Slepe, Lytchett Minster, Poole, Dorset BH16 6HS

- 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 James Selby Bennett of Slepe Farm Ltd for a full award of costs against Purbeck District Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for change of use of an agricultural building to a dwellinghouse.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
 3. An award of costs is sought for reasons summarised as follows. Permitted development rights were provided by Parliament for the residential conversion of farm buildings or offices without having to apply for planning permission. The Council denied the applicant the opportunity to apply for prior approval in respect of the change of use of the barn from an office to a dwelling. It then refused prior approval on the basis that the barn was partly used as a farm office. The applicant considers that the Council's actions have subverted Parliament's intentions.
 4. In response, the Council said that it had worked pro-actively with the applicant to determine the correct form of application and it offered advice on a way forward that the Council could support. The applicant could not make a combined prior approval application under Class O and Class Q. The restrictions, limitations of conditions of both Classes are different. There is also no evidence that the use of the office is lawful for planning purposes. The Council did not persuade the applicant to submit for prior approval. The reason for refusal stands up to scrutiny.
 5. I have treated the application as if it were made on both procedural and substantive grounds. Paragraph 047 of the PPG provides a (non-exhaustive)
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list of the type of unreasonable behaviour that may put a Council at risk of an award of costs on procedural grounds. This can include providing information that is shown to be manifestly inaccurate.

6. Paragraph 047 of the PPG provides a (non-exhaustive) list of the type of unreasonable behaviour that may put a Council at risk of an award of costs concerning the substance of the case. This can include preventing or delaying development which should clearly be permitted and failing to substantiate its reason for refusal.
7. Additionally, paragraph 033 of the PPG makes it clear that whilst costs can only be awarded in relation to unnecessary or wasted expense incurred during the appeal and not in respect of the application itself, the Council's behaviour and actions at the time of the application can be taken into account in assessing whether costs should be awarded.
8. The Council's reason for refusal concerns the failure of the proposal to comply with Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The permitted development rights for the change of use of agricultural buildings under Class Q are qualified by the relevant requirements, limitations and conditions, which all have to be complied with for the GPDO right to apply. Had Parliament not intended this to be the case, the GPDO would surely have been drafted differently.
9. The Council produced substantial, relevant evidence in its written statement, which clearly supported its conclusions that the proposal would not comply with Class Q. There is no significant inaccuracy in any of the Council's evidence and nothing which would indicate that its findings represented an unreasonably restrictive interpretation of the GPDO. Therefore, I find that the Council's reason for refusal stands up to objective scrutiny and it was substantiated at the appeal. As a result, I have not found anything to suggest that the Council have prevented or delayed development which should otherwise clearly have been permitted. For a similar reason, I do not regard the Council's actions in relation to the procedures of the appeal as being unreasonable.
10. I accept that the applicant is critical of the manner in which the Council dealt with the application for prior approval. However, given the form in which the application was made and the differing restrictions, conditions and limitations in Class O and Class Q respectively, it was not unreasonable for the Council to seek clarification of the specific nature of the proposal for which prior approval was sought, in the interests of certainty. The Council explained why it believed that the application should be considered under Class Q and it sought the applicant's agreement to change the application. Notwithstanding this change, the applicant could have made a separate application for prior approval under Class O. I also note that the Council offered advice on the alternative forms of application available to the applicant in order to pursue the proposal and it invited further discussions. Therefore, I do not regard the Council's handling of the application as being fundamentally unhelpful or as falling below the general expectation on parties to conduct them in a reasonable manner.
11. Accordingly, the conditions in paragraph 030 of the PPG have been not met and an award of costs is not justified.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR