
Costs Decision

Site visit made on 17 July 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 17 August 2017

Costs application in relation to Appeal Ref: APP/P2935/W/17/3174316 Breckon Hill Farm, Lowgate, Hexham, Northumberland NE46 2NL

- 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 M Haigh for a partial award of costs against Northumberland County 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 conversion of existing barn to residential use.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. The Council's reason for refusal refers to the proposal resulting in a cumulative floorspace in excess of 450 square metres. Subsequent to that decision, the Council has accepted that this was an error based on a misreading of the plans. However, prior to the submission of the appeal the Council accepted this error in correspondence with the applicant. The Council have also not contested the ground of appeal on this matter. This is acknowledged by the applicant who has made an application for a partial award of costs on the assumption that the Council do not defend the area miscalculation. This issue was also not a determinative matter in this appeal, which I have dismissed for other reasons.
4. Notwithstanding my comments in relation to the area calculation, I consider that the Council's reason for refusal is clear and justified. The Council refer to the proposed partial demolition and building operations going beyond that which would be 'reasonably necessary' to convert the building to a dwellinghouse. This reflects Class Q of the General Permitted Development Order (GPDO) and, as can be seen from my Appeal decision, I have agreed with the Council on these matters in dismissing the appeal.
5. The applicant states that the Council has not specified what elements of the building operations do not meet the tests in the legislation. However, as set

out in my Appeal Decision, the *Hibbitt* judgement¹ clarifies that the overarching principle of whether or not a proposal represents a conversion is a matter of planning judgement, and is not governed by the exceptions listed in Q.1 of class Q of the GPDO. The Council's reference to partial demolition was also valid as this would remove an extent of wall which encloses part of the original building and which adds to the overall assessment of the proposal. I therefore consider that the Council has not behaved unreasonably in their assessment of the proposal and has substantiated their decision, as reflected in my Appeal Decision.

6. The applicant also states that the Council did not ask for clarification about the retained structure. However, this is not the determinative factor as to whether a proposal represents a conversion, as is clarified in *Hibbitt*. The Council have therefore not behaved unreasonably in not requesting clarification on this matter.
7. The applicant contends that the Council's decision is inconsistent as it does not reflect the numerous examples presented as part of the application and subsequent appeal. However, as can be seen from my Appeal Decision, I consider that the examples are either materially different from the appeal proposal or have not been considered in the light of *Hibbitt*. The Council has therefore not behaved unreasonably in determining the application on its own merits as none of the examples given by the applicant provide compelling evidence to do otherwise.
8. I acknowledge that the Council only raised their concerns on the proposal with the applicant on the day of their determination of the application. However, even if discussions with the applicant had taken place in advance of this, I am not persuaded that they would have been able to overcome the Council's concerns due to the extent of the works inherent in the proposal. This matter has therefore not led to an appeal which could otherwise have been avoided.
9. I note that there are some discrepancies in the Council's comments on the proposal, including reference to volume, determination by Committee and the structure of the area to be demolished. However, these are not substantive matters and I consider these errors do not amount to unreasonable behaviour.
10. Drawing the above together, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. On this basis, no award of costs is made.

David Cross

INSPECTOR

¹ *Hibbitt and Another V Secretary of State for Communities and Local Government and Rushcliffe Borough Council* [2016] EWHC 2853 (Admin).