
Costs Decisions

Site visit made on 28 November 2017

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 21st March 2018

Costs applications in relation to Appeal Ref: APP/H1705/W/17/3179625 Ground floor of the barn south west of Folly Farmhouse, Thornford Road, Headley, Thatcham RG19 8AH

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Mr Jeff Day for a full award of costs against Basingstoke & Deane Borough Council.
 - Application B is made by Basingstoke & Deane Borough Council for a full award of costs against Mr Jeff Day.
 - The appeal was against the refusal of prior approval required under Paragraph Q.1 of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the change of use of an agricultural building to a Class C3 dwellinghouse.
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Decisions and Costs Order

Application A

1. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Basingstoke & Deane Borough Council shall pay to Mr Jeff Day, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Basingstoke & Deane Borough 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.

Application B

1. The application is refused.

Reasons

3. 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.

Application A

4. The Council has argued that the appeal proposal fell outside of the ambit of Class Q because the first floor of the building was not in agricultural use on the relevant date of 20 March 2013. However, as I have made clear in my substantive decision, the building in this case relates only to the ground floor of

the building, and the “site” relates only to that part of the building. In the absence of any specific provision, the definition of “agricultural building” in paragraph X does not disapply the overriding definition of “building” contained in Article 2(1). The Council paints the different interpretations as merely being differences of opinion, but to my mind, the wording of Class Q and paragraph X, together with the definitions contained in Article 2(1) of the Order, make it plain that it is appropriate to consider “the building” as being solely the part of the building applied for.

5. I consider that it was unreasonable to attempt to construe the Order as barring the application of the Class Q rights to this particular part of the building. It is also incompatible with the finding of the Court of Appeal in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, which concerned an agricultural building, holding that the provisions of Class Q could relate to part of a building. The Guidance also indicates that acting contrary to, or not following, well-established case law may be grounds for awarding costs against local planning authorities.
6. The contention that the ground floor of the barn was not in used in connection with agriculture carried out as a trade or business is, frankly, bizarre. Previous applications had been dealt with on the basis that Folly Farm was an established agricultural unit. A previous prior approval¹ on another barn within the same farm unit points to the Council’s acceptance of that issue.
7. In respect of the appeal building, the terms of the enforcement notice referred to specific agricultural uses made of the building. I also attach significant weight to the findings of the previous Inspector who visited the barn shortly before the relevant date, and found that the barn had been used for agricultural purposes since it was built and that nothing pointed to that use having ceased. The planning officer’s report in connection with this appeal proposal refers to the items noted on the site inspection carried out in connection with the application, commenting that “Whilst these items (which) are widely used for the non-agricultural management of a land estate, they could also equally be found upon an agricultural holding to allow the maintenance and management of that holding”.
8. No further enquiries were made by the Council about the use of the barn in connection with the farm, and in my view, in the light of what had gone on before, it was unreasonable not to accept the prima facie evidence that the use made of the ground floor of the barn was in connection with the agricultural activities of the farm.
9. The Council claims that the appellant has not provided specific evidence to demonstrate that the agricultural building was in qualifying use on the relevant date of 20 March 2013 such to contradict the records held by the Council. However, the Council has no records of the use of the barn on the relevant date. The Inspector who carried out a site visit to the barn just 15 days before the relevant date did not refer to any non-agricultural use of the ground floor of the barn, and as I have indicated in the substantive appeal decision, I consider that had he seen any non-agricultural use, he would have referred to it. His finding that the agricultural use of the barn had not ceased reinforces this point.

¹ LPA Ref: 15/03011/GPDADW

10. From the outset the appellant has explained why, in accordance with the definitions and interpretations set out in the Order, the ground floor of the barn may be considered to be a "building" and "site", divorced from the first floor of the barn which could not satisfy the terms of Class Q. I consider that the Council's approach was unreasonably blinkered. Had the Council adopted a more helpful approach and accepted the appellant's offer of a meeting, it is possible that at least some of these matters could have been resolved.
11. In respect of the Council's concern that the juxtaposition of the ground floor residential use with the first floor agricultural use was undesirable and impractical, I accept that this is a matter of judgement having regard to the particular facts, and involves an element of subjectivity. On the basis of those facts alone, I consider that the Council's finding would not be unreasonable, were it not that the Council has previously determined an application for prior approval for the same development where no such argument was put forward². The Guidance gives examples of unreasonable behaviour on the part of local planning authorities which includes not determining similar cases in a consistent manner.
12. There has been no material change in circumstance since the determination of that application in May 2016 which would justify arriving at a different decision on this case. The Council's claim that the application was withdrawn when it was determined has muddied the waters, but this does not affect my finding that the Council's inconsistent approach has been unreasonable in all of the circumstances.
13. I therefore conclude that unreasonable behaviour as described in the Guidance has been demonstrated, and that the appellant has been put to unnecessary expense in bringing the appeal. The application for a full award of costs therefore succeeds.

Application B

14. The Council argues that the "same agricultural building" was found by a previous Inspector³ not to be a building used solely for agricultural use. However, that application related to both the ground floor and the first floor of the building. The first floor was not solely in agricultural use on the relevant date, and as it formed part of "the building", it is clear that Class Q could not apply to it.
15. This proposal relates only to the ground floor, excluding the first floor of the building which was not solely in agricultural use on the relevant date, and thus it is materially different from the previous appeal case.
16. For the reasons explained in the substantive decision, I have found that the ground floor was in agricultural use on the relevant date, and that the provisions of Class Q apply to it. The appeal was therefore both necessary and reasonable. I therefore conclude that unreasonable behaviour as referred to in the Guidance has not been demonstrated, and that the application fails.

JP Roberts

INSPECTOR

² LPA Ref: 16/01055/GPADADW

³ Under Ref: APP/H1705/W/15/3002489