The Planning Inspectorate

Costs Decision

Hearing Held on 9 October 2019

Site visit made on 9 October 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Costs application in relation to Appeal Ref: APP/V3310/W/19/3221047 Agricultural Building, Wood Lane Farm, Wood Lane, Stawell, Bridgwater TA7 9AB

- 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 Miss Carol Easter for a partial award of costs against Sedgemoor District Council.
- The hearing was in connection with an appeal against the refusal to grant the prior approval of the proposed change of use of an agricultural building to 4 no dwellings and associated operational development.

Decision

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

The submissions for Miss Carol Easter

2. A partial award of costs is sought in regard of the first reason for refusal. In respect of an earlier prior approval application to convert the barn, the planning officer only raised issues with the extent of the works to the building and vehicular rights. That application was withdrawn to address these matters. This provides the background to the unreasonable behaviour and subsequent unnecessary and wasted expense incurred by the applicant.

3. With the subsequent application, concerns were then raised by the Council regarding the agricultural use of the building. This focused on the use on 20 March 2013 and did not evaluate the situation before this date as required by the full wording of paragraph A.1.(a) of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The Council had in its possession the information regarding the agricultural use of the holding but did not make sufficient reference to this in its report. The applicant was put to additional expense in providing the evidence of agricultural use, including preparing appeal evidence and responding to the Council's statement of case.

4. It is said that if the Council had taken into account the evidence of agricultural use it had available from the previous Certificate application, and recognised the situation before 20 March 2013, the Council would have realised that it lacked the evidence to justify this reason for refusal.

The response by Sedgemoor District Council

5. The Council has explained that the officer response to the subsequently withdrawn application highlighted the concern that the works did not constitute a conversion. This was an officer view and that this response did not state it was a definitive list of the concerns, only that the issue was fundamental such that the proposal would not meet the requirements of Class Q. No formal decision was made on the application.

6. The Council acted reasonably when it made a formal decision on the appeal proposal. A full assessment of the merits of the application was made and it was judged that it had not been demonstrated that the site was used for an agricultural use such that it met the relevant requirements of the GPDO.

7. At the hearing, it was emphasised that a missing element from the appellant's submission which had been referenced in the reason for refusal, and is a requirement of the GPDO, is that the site was not part of an established agricultural unit. As a consequence, it is said that the Council has not acted unreasonably in refusing the application in respect of the first reason for refusal and the applicant was not put to any unnecessary or wasted expense.

Reasons

8. The Planning Practice Guidance (the 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.

9. The Council did not make a formal decision on the earlier application, only providing informal officer advice. Therefore, while background information, it is not directly relevant for my considerations of an application for costs in respect of this appeal proposal.

10. It was not unreasonable for the Council to identify as a concern, in its view, the likely non-agricultural use of the building, as it had been highlighted in the Certificate application that the main use of the holding was equestrian and for the breeding of cats and dogs. The Council made clear references to the evidence submitted during the Certificate application which emphasised the non-agricultural use of the holding and this supported the proposition that the appeal site may not have been in sole agricultural use.

11. In my view, the use of the appeal building was given greater clarity by the appellant with the appeal submissions, including the statutory declaration from the appellant dated 15 January 2019. This indicated that the building was in use for agricultural storage and fodder from mid-2012 to August 2013. As the building was in use on 20 March 2013[1], and not empty, I do not consider that the Council has been unreasonable in the way it considered the use of the building in relation to the requirements of the GPDO in this respect.

12. Given the previous information from the Certificate application and the other supporting evidence regarding the use of the holding, I consider it was appropriate for the Council to raise the use of the building and the case made was sufficiently cogent and with such merit that it was not unreasonable.

[1] A key date in paragraph A.1.(a) of Class Q of Part 3 of Schedule 2 of the GPDO.

13. The first reason for refusal not only questions the use of the building but also references the requirement that the site should be part of an established agricultural unit. It will be seen from the decision that I agree with the Council in this respect and therefore this aspect of the reason for refusal is well founded.

14. As a result of the above, it follows that I cannot agree that the Council has acted unreasonably in this case and, indeed, overall the first reason for refusal was substantiated. As such there can be no question that the appellant was put to unnecessary or wasted expense.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR