



Costs Decision

Site visit made on 23 September 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2019

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3232818 Barn A, Ballickacre Farm, Cricklade, Wiltshire SN6 6HZ

- 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 Wiltshire Council for a full award of costs against Mr Telford.
 - The appeal was against the refusal of development described as: "The purpose of this application is to request the local planning authority's consideration of a proposal to renovate part of Barn A at the above location as previously permitted for a larger scale conversion by 16-05752-PNCOU dated 15/08/2016".
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Decision

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

Procedural matter

2. The application for costs has been made against Mr and Mrs Telford, however the appellant is only Mr Telford, as such I have adjusted the banner heading accordingly.

Reasons

3. 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.
4. Guidance for when appellants may be vulnerable to costs being awarded against them include if the appeal had no reasonable prospect of succeeding. The Council considers that it gave clear and robust advice that the proposal would be unlikely to gain consent. The costs application essentially relies on the assertion that the Appellant pursued an appeal despite there being no realistic prospect of a favourable outcome. This assertion is based on the key matters associated with this case, being the variation of sites between the 2016 approval and the proposal, the contents and limited material within the structural survey and the appellant's interpretation of the Hibbitt's case¹.
5. The appellant considers there to be no material difference between the approved 2016 Prior Notification and the proposed scheme. However, it is clear from my findings in the appeal decision that the approved scheme in 2016 involved the east end of the barn, whilst the current proposal is concerned with the west end. The sales particulars are not correctly transcribed from the 2016

¹ Court ruling: Hibbitt v SSCLG [2016] EWHC 2853

approval. As a result, work commenced incorrectly with the demolition of part of the barn consented to be converted. The proposal is therefore materially different from the approved scheme.

6. The Council has suggested that the structural survey in support of the 2019 proposal was not comprehensive, did not assess non-steel elements and the second survey also remained vague. The appellant contends that the structural survey was satisfactory in 2016 and should have been suitable in support of the proposal. Although I recognise that the building may have deteriorated in the intervening period, in terms of consistency, it should have been adequate. Having considered the survey myself, whilst limited in detail, I found it to be adequate for its purpose. I therefore have found that the core structure would have been likely to be sufficient to bear the proposed works.
7. The Council's suggestion that the appellant misapplied the Hibbitt case looks more to the merits of the case rather than grounds for costs to be awarded. I do not find that this area of case law to be so transparent that the proposal was without merit, especially in mind of the context created by the 2016 approval. Furthermore, the conditions and limitations of Class Q require a degree of subjective interpretation. However, guidance and case law have evolved between the timeframe of these two applications. It was therefore misguided of the appellant to assume that the second scheme would be routinely agreed or that a revision of the block plan, which would have materially altered the red-lined site, could be achieved within the parameters of the 2016 consent. This apparent confusion has resulted in extenuating circumstances that weigh against awarding costs.
8. I therefore find that the Appellant has not behaved unreasonably, as described in the Guidance, or that the appeal had no reasonable prospect of succeeding.
9. The application for costs is consequently declined.

Ben Plenty

INSPECTOR