
Costs Decision

Site visit made on 6 November 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

**Costs application in relation to Appeal Ref: APP/D1265/W/19/3236087
Bascombe's Barn, Land adjoining Jubilee Farm, Burts Lane, Mannington,
Dorset BH21 7JX**

- 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 Philip Bascombe for a full award of costs against Dorset Council.
 - The appeal was against the grant subject to conditions of approval required under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from agricultural barn to flexible commercial use.
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Decision

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

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 basis of the applicant's claim is that the Council acted unreasonably by failing to defend its decision.
4. In view of the fact that the Council accepted that its decision was not valid, defence of the decision would not have been appropriate. This was nonetheless a reflection of the fact that the decision was not defensible. This ultimately generated a right of appeal.
5. Here the Council nonetheless disputes the necessity of the appeal. This is given that the decision was issued outside the statutory timeframe, and thus prior approval was otherwise deemed to be granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
6. In this regard, though the Council claims that the applicant was aware that it was working to the wrong timetable even before the decision was issued, what the applicant did or did not know at this stage is far from clear. Furthermore, the Council could have issued its decision in advance of the 56 day target it was working to.
7. The Council additionally claims that the applicant could have approached the Council informally instead of making an appeal. However, be that as it may,

the applicant cannot be held at fault for simply engaging in the formal process of appealing the decision that the Council had issued.

8. I appreciate that email correspondence nonetheless suggests that the applicant was willing to consider withdrawing the appeal once the Council's position became clear. This would have shortened both the appeal proceedings and their cost. The fact that the Council did not intend to defend the appeal was indeed apparent from a very early stage in the process.
9. However, in withdrawing the appeal the applicant would have forgone the right to claim costs. In this regard, given that informal discussions between the parties regarding costs broke down, pursuit of a formal claim, thus prolonging the appeal proceedings, was justified.
10. For the reasons outlined above I find that a clear case exists for an award of the costs incurred by the applicant. This is because there would have been no appeal had the Council not erroneously issued a decision which proved itself incapable of defence. This was unreasonable, and the costs of appealing the decision were thus wasted. I conclude therefore that the applicant should be awarded the full costs of the appeal proceedings.

Conclusion

11. For the reasons set out above I conclude that the applicant's claim for a full award of costs should be allowed.

Costs Order

12. 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 Dorset Council shall pay to Mr Philip Bascombe, the full costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Dorset 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Benjamin Webb

INSPECTOR