



Costs Decision

Site visit made on 18 February 2020

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2020

Costs application in relation to Appeal Ref: APP/P3040/W/19/3241917 Agricultural Building at Stanton Farm, Browns Lane, Stanton-On-The-Wolds, Nottinghamshire NG12 5BL

- 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 AD McClaren and Son for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of the Council to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
-

Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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 expenditure in the appeal process.
3. The reason for refusal sets out the Council's conclusions that the alterations and new construction required to convert the appeal building go beyond what is 'reasonably necessary' and are tantamount to the construction of new dwellings rather than a conversion scheme. It is clear from the Council's delegated report that the planning officer's understanding, that the proposal involved the construction of new foundations to support the external walls, was a significant factor in the Council reaching those conclusions.
4. That understanding of the proposal was misplaced. However, I consider that it was a genuine misunderstanding and did not involve unreasonable behaviour on the Council's part. I also consider that the appellant played a significant role in creating that misunderstanding by failing to submit properly updated information in support of their revised application following the Council's refusal of the previous application (Ref 19/00783/PAQ) in May 2019.
5. The revised scheme drawings show the existing cladding to the walls and roof to be retained and only show works to the exterior of the building comprising the alteration of existing openings/creation of new openings for doors and windows. However, it would not be expected that the planning drawings would include details of foundation works and the officer appears to have formed the understanding that such works were proposed by reading the appellant's Structural Assessment report. That report, dated March 2019, seems not to

have been reviewed or updated before it was resubmitted with the revised application. Any confusion on the officer's part would have been added to by page 12 of the Planning Statement which states that it is proposed to "*partially replace the walls with rendered brickwork*". The responsibility for ensuring consistency between those supporting documents and the revised drawings rested squarely with the appellant and not with the Council.

6. Had there been discussions between the parties, either before the application was made or before it was determined, that misunderstanding might possibly have been corrected. In practice the clarification, that no foundations or other external structural works are proposed and that the reference to the need for new foundations in the Structural Assessment is to the previously refused scheme, was only given in the appellant's appeal statement. That clarification may not have come to light in the absence of the appeal.
7. Apart from minor changes to wording, sections 1, 2, 4 and 5 of the Council's statement are identical to the officer report. Only section 6 (the response to the grounds of appeal) is completely new. My examination of that statement does not support the claim that the Council sought to introduce concerns about the building curtilage or the agricultural appearance of the building as new issues. The statement does raise the issue of the structural suitability of the building for conversion. However, this is in the context of the appellant's clarification that the conclusions in the Structural Assessment report about the works necessary to comply with building regulations related to the previously refused scheme. I do not agree with the Council's conclusions as to structural suitability. However, I do not consider it unreasonable for the Council to point out that the Structural Assessment does not expressly consider the proposal that is the subject of the appeal.
8. I agree that the construction of a new floor is recognised, in paragraph 105 of the PPG, as internal works which are not prohibited by Class Q of the General Permitted Development Order. However, the reference to these works in the delegated report feeds into the officer's conclusions as to the overall suitability of the building for conversion and whether or not the scheme goes beyond the threshold of conversion identified in the Hibbitt judgment.¹ I do not consider that to have been an unreasonable approach for the Council to have taken.
9. References are made to other Prior Approval decisions but, as both parties acknowledge, proposals should properly be considered on their individual merits. This is particularly necessary when considering whether a proposal is within the scope of Class Q. I do not consider that there is evidence that the Council has been inconsistent in its approach to the appealed application.
10. I find that there has been no unreasonable behaviour on the Council's part resulting in unnecessary or wasted expenditure by the appellant. I therefore conclude that the application for an award of costs should be refused.

Paul Singleton

INSPECTOR

¹ Hibbitt v SSCLG [2016] EWHC 2853