



Costs Decision

Site visit made on 28 January 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Costs application in relation to Appeal Ref: APP/J1915/W/19/3242050 Poultry Barn, Monks Green Farm Ltd, Mangrove Lane, Hertford, Herts SG13 8QL

- 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 William Ashley (Monks Green Farm Ltd) for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of the to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of agricultural building to C3 (residential) for 5 dwellings.
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Decision

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

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 application for a full award of costs is on the basis that the Council have not provided evidence in either their delegated report or appeal statement and only refer to Council records. The applicant suggests that the officer did not respond or acknowledge the e-mails sent, which requested the evidence of the Council's records and as such the officer's reasons for refusal are based solely on opinion and have caused unnecessary expense in the search to provide their own records. Furthermore, the applicant considers that the Council is inconsistent with their approach to determinations of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) Schedule 2, Part 3, Class Q applications (the GPDO).
4. The Council did not explicitly reference the letters submitted by the applicant and whilst they say the contents of the documents is included in the officer's reports, the applicant says that the information was not acknowledged. From the information before me it does not appear that the Council ignored the information but moderated the weight attached to them in light of other conflicting evidence. The details of this are explained in the Council's statements. Whilst, the officers report clearly sets out the planning history of the site, including application references, proposals, decision and dates, it also sets out a description of the site and its surroundings, which has likely been

from their assessment and own judgement following the site visit, of which they are entitled to do so.

5. However, the Council maintain that without such evidence to the contrary the onus is on the applicant to prove beyond all reasonable doubt that the building was in agricultural use at the specified time required by Q1.(a) of the GPDO. The correct test is the balance of probability. Nevertheless, as the decision for the case did not solely turn on this point, I am of the view that the Council's error would have not led to a different conclusion for the appeal scheme. The appeal was inevitable given the disagreement between the main parties regarding whether the proposals constituted permitted development.
6. Whilst the applicant says the Council was of the view that the building and appeal site was part of one established agricultural unit as they had accepted agricultural holding numbers, at the time of the planning application, this is not borne out in the evidence. In the officer reports the Council makes specific reference to Q.1 (b) and (c) of the GPDO and assessed the proposal on the criteria of the GPDO. There is therefore little before me to suggest that the Council misinterpreted the GPDO in terms of the definition of an established agricultural unit.
7. The applicant has also referred to other prior approvals, I have not been provided with any substantive evidence that the Council determined the application in a less than consistent manner than any others, in any event, each application would have been determined on its own individual merits and supported evidence.
8. I appreciate that the applicant has engaged with the Council prior to the determination in the email correspondence (Email Chain 1), it appears to me that it is a response to comments that have been received rather than a request for all Council planning records on the appeal site. The matter of requesting a Freedom of Information (FOI), bears no weight and would be the choice of the applicant if he wished to pursue this option.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

KA Taylor

INSPECTOR