



Costs Decision

Site visit made on 10 March 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Costs application in relation to Appeal Ref: APP/L2820/W/19/3243571 Agricultural Barn, Harborough Road, Dingley, Leicestershire LE16 8PJ

- 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 D Harding, Samuel Harding & Sons, Ltd for a full award of costs against Kettering Borough Council.
 - The appeal was against the refusal of prior approval for change of use of agricultural building to 4 dwellings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the 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 expense in the appeal process.
3. The applicant claims that the Council's actions amount to unreasonable behaviour in 3 respects. The first of these is that the Council chose not to accept the advice of a structural engineer's report without the benefit of any alternative structural evidence.
4. The second respect is that it failed to properly assess the extent of the proposed works with reference to the facts of the *Hibbitt*¹ case and an appeal decision relating to another site in the Borough at Loddington Coppice Farm².
5. The third respect is that it disregarded paragraph 105 of the PPG in pre-application correspondence and when assessing the application, and also failed to refer to the correct version.
6. In response, the Council states that each case is assessed on its own individual merits and that it exercised the required planning judgement in determining whether the application represented a conversion or a rebuild. It also states that it did not disregard paragraph 105 and correctly referred to it in assessing the internal structural works. Finally, it considers the pre-application correspondence to represent customer service that helped the applicant understand the Council's likely position.

¹ Hibbitt & Another v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin)

² APP/L2820/W/19/3223350 dated 4 July 2019

7. The structural engineer's report concluded that the building's steel frame and foundations can support the proposed works and are suitable for the proposed residential use. In my view, the Council's assessment did not contradict this; rather it shows that it considered the extent of the proposed works, including non-structural matters. Given this, I see no reason why the Council should have commissioned alternative structural evidence and find that it acted reasonably.
8. In the *Hibbitt* case, the building was open on 3 sides and the works involved construction of 4 external walls, held to be "in all practical terms starting afresh, with only a modest amount of help from the original agricultural building". In the Loddington Coppice Farm appeal decision, the installation of features including external wall sheeting and a new roof covering were found to be very extensive and greater than allowed for by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)³.
9. The drawings from *Hibbitt* and the Loddington Coppice Farm appeal are not before me but the written descriptions in the judgement and the appeal decision indicate that both involved more extensive external alterations than in this case. However, the Council also took account of internal works, including flooring, that do not appear to have a parallel in the descriptions in *Hibbitt* or Loddington Coppice Farm. It was reasonable for the Council to also consider these internal works when forming its view.
10. However, the Council also noted the PPG's advice that internal works are not generally development and may be appropriate in agricultural to residential conversions. The PPG gives examples, including works to allow for a floor, and the wording indicates that the list is not exhaustive. As to the extent of the internal works, it is to be expected that agricultural buildings will often require the installation of ceilings, internal wall surfaces and improved flooring, all with appropriate insulation, in order to enable residential occupation.
11. Given this, and the greater extent of external works in *Hibbitt* and at Loddington Coppice Farm, it is difficult to understand why the Council concluded that "the whole building would be likely to be demolished and re-built with the frame being retained as feature only" and that there would be "substantial or total demolition of the existing building and reconstruction or replacement". Those statements were central to the Council's decision to refuse prior approval and I find that it has not adequately substantiated its reasoning in this regard, a form of unreasonable behaviour set out in paragraph 049 of the PPG.
12. The Council referred to some wording from the superseded 2015 version of paragraph 105 of the PPG in its assessment. However, it paraphrased the part of the current version that gives guidance on internal works, which was critical to its assessment of the proposal. Accordingly, I am satisfied that the error had limited effect and did not amount to unreasonable behaviour.
13. Pre-application advice is given without prejudice and cannot pre-determine the outcome of a subsequent application. The pre-application exchange of email correspondence followed a meeting held on 16 April 2019. I have not been given a record of that meeting, so I cannot tell whether the emails fully record

³ Article 3(1) and Schedule 2, Part 3, paragraph Q.1(i)

the Council's advice. Nevertheless, the exchange included an extract from paragraph 105 that the applicant had asked the Council to consider and this indicates that the paragraph was not disregarded. Furthermore, an opportunity existed for the applicant to seek to discuss any perceived failings in the Council's advice before submitting the application, well in advance of the appeal process. For these reasons, I do not find unreasonable behaviour on the Council's part at the pre-application stage.

Conclusion

14. For the reasons set out in paragraphs 10 and 11 above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Kettering Borough Council shall pay to Mr D Harding, Samuel Harding & Sons Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Kettering Borough 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.

Mark Harbottle

INSPECTOR