



Costs Decision

Site visit made on 4 August 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2020

Costs application in relation to Appeal Ref: APP/Y1138/W/20/3252641 Barn at Marchweeke Farm, Road from Thelbridge Cross to Doctors Corner, Witheridge, EX16 8NY

- 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 Rebecca Preece for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal to grant prior approval for the conversion of an agricultural building to residential dwelling (C3) under Class Q of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended).
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. In this case the Council refused prior approval for the change of use of the agricultural building on the grounds that it would result in unsatisfactory living conditions for future occupants due to noise, smell and disturbance arising from the proximity of the proposed dwelling to existing farm buildings and vehicle movements.
4. The application for an award of costs is predicated on the argument that the objection could have been overcome by using a condition. It is also suggested that the Council has not determined similar cases in a consistent manner.
5. As I have set out in my decision, the location of the appeal building in close proximity to the retained farm buildings is such that the only practical means of providing future occupants of the development with satisfactory living conditions is to impose a condition restricting the use of the adjacent retained barn to storage purposes only. I have found such a condition would be reasonably related to the subject matter of the prior approval. It would also meet the tests set out in paragraph 55 of the National Planning Policy Framework (the Framework).

6. Accordingly, and having had regard to the PPG, I consider that the Council acted unreasonably in refusing planning permission on a planning ground capable of being dealt with by a condition that would enable the development to go ahead.
7. Although each case must be determined on its own merits an applicant should expect similar cases to be dealt with in a similar manner. The Council has previously imposed restrictive conditions on barn conversion schemes which have a similar relationship with nearby agricultural buildings. This includes a prior approval at Lodge Farm, Thorverton¹ which was granted after the refusal of the scheme before me. This indicates that the Council has accepted the use of such a condition would be capable of overcoming its objections in similar circumstances and that it would meet the tests set out in the Framework.
8. The applicant contends that the Council's decision is inconsistent as it does not reflect the examples presented as part of the application and subsequent appeal. As can be seen from my decision, I have found these consented schemes with restrictions on the use of nearby agricultural buildings to be similar to the circumstances of the scheme that is the subject of the appeal. The Council has therefore been inconsistent in its approach and has, in my view, behaved unreasonably.
9. The Council's objections also related to general disturbances from farm vehicle movements, but it provided no further details in this regard. The Council also cites the pressure to erect another building elsewhere on the holding based on an appeal decision² at Heath Farm in Torridge District but has not provided reasoning as to why this would occur in the context of the appeal site. For the reasons I have described in my decision, I do not agree with the conclusions that were reached. I have also found that the Council's case was not adequately reasoned in respect of these matters in its appeal statement.
10. The refusal of planning permission on this basis therefore constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG. The appellant has been faced with the unnecessary expense of lodging the appeal and an award of costs is therefore justified.

Costs Order

11. 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 Mid Devon District Council shall pay to Rebecca Preece, the costs of the appeal proceedings described in the heading of this decision.

Rachael Pipkin

INSPECTOR

¹ Council Ref 20/00244/PNCOU

² APP/W1145/W/17/3172385