
Costs Decision

Site visit made on 15 September 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 September 2020

Costs application in relation to Appeal Ref: APP/D0840/X/19/3241734 The Barn, Coosebean Lane, Truro, TR4 9EB

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Cornwall Council for a full award of costs against Mr and Mrs J Solomon.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development (LDC) for the proposed use of The Barn as a dwelling.
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Decision

1. The application for an award of costs 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 expense in the appeal process. It provides some examples of the type of behaviour that may give rise to an award of costs. Paragraph 53 explains that sometimes it is made plain by a recent appeal decision relating to the same, or a very similar, proposal on the same site that development should not be allowed. The Appellant is then at risk of an award of costs if they persist with an appeal on the ground that permission ought to be granted for the development in question.
3. There have been two previous appeal decisions concerning the proposed change of use of The Barn from an agricultural building to a dwellinghouse. But crucially, neither of these appeal decisions reached any conclusion as to whether the building operations proposed by the Appellants would constitute Permitted Development.
4. The Inspector who determined the 2016 appeal did so on the basis that the application had been made under Class Q(a) of the GPDO only (that is, the proposed change of use) and so made no finding in respect of Class Q(b) (that is, the building operations necessary to effect the conversion): she noted that the proper course of action would be for the Appellants to make a further application under Class Q(b). The Inspector who determined the 2019 appeal concluded that late notification of the Council's decision resulted in deemed approval for the scheme, but made it clear that his decision did not include any conclusion as to whether the proposed operational development associated with the residential conversion would fall within the limitations of the GPDO. He noted that if there was a dispute between the parties on the issue, it was a matter for them to resolve.

5. It is not, therefore, the case that either of the two previous appeal decisions made it plain that the proposed building operations to convert The Barn to a dwelling should not be allowed. Rather, both appeal decisions make it plain that this is not a matter they address. That being so, it was clearly not unreasonable for the Appellants to submit an application for a LDC to establish whether or not the proposed building operations would be lawful – indeed, the Council’s letter to them dated 8 May 2019 suggested that they do so. Having followed the Council’s suggestion of making an application for a LDC, I consider that it was not in principle unreasonable for the Appellants to then exercise their right to appeal against that refusal.
6. I can understand the Council’s frustration at the Appellants’ approach of basing the LDC application, and subsequent appeal, on an erroneous interpretation of the implications of the two previous appeal decisions; particularly in the light of the Council’s (commendable, in my view) attempt to clarify matters for them in its letter of 8 May 2019. But I see nothing in the evidence before me to indicate that the Appellants’ misunderstanding was wilful. Permitted Development is a complex area of planning, and in my experience it is not unusual for mistakes to persist, particularly in connection with situations involving Prior Approval.
7. The Appellants’ failure to provide any supporting evidence is regrettable, particularly when the relevant evidence had been specifically requested by the Council in its letter of 30 September 2019, which explained why such evidence was needed. But again, it seems to me that the Appellants’ response to this request was attributable to their erroneous interpretation of the previous appeal decisions, rather than any deliberate obstruction or refusal to engage. As set out above the PPG makes it clear that in LDC appeals such as this, the burden of proving the relevant facts rest with the Appellant. The extent, or lack, of the evidence submitted in support of the Appellants’ case – and the quality and relevance of that evidence – is therefore ultimately a matter for them.
8. The Council makes the point that had the Appellants sought professional advice, the relevant legislation would have been explained and the appeal could have been avoided in its entirety. That may well be so, but there can be no obligation upon any Appellant to seek professional advice, and of course many may not be in a position to be able to do so.
9. In conclusion, for the reasons set out above I consider the Appellants’ approach and submissions in this appeal to be attributable to a misunderstanding which, in the circumstances of this particular case, does not constitute unreasonable behaviour resulting in unnecessary or wasted expense. An award of costs is not therefore justified.

Jessica Graham

INSPECTOR