
Costs Decision

Site visit made on 24 August 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Costs application in relation to Appeal Ref: APP/L3815/W/20/3253894 Lower Hone Farm Barn, Lower Hone Lane, Bosham PO18 8QN

- 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 Richard Hermer for a full award of costs against Chichester District Council.
 - The appeal was against the refusal of planning permission for a contemporary barn conversion and provision of associated landscaping, natural swimming pond and associated works.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. I note that the applicant has concerns with the Council's conduct of the relevant planning committee meeting, including its format as a 'virtual' event, and considers that there was limited opportunity for him and his professional advisors to participate. However, having made the decision that it did the substance of the application is that officers gave members incorrect and misleading information which likely had a material impact on the decision of some members to refuse planning permission. In addition, that the Council did not provide a copy of its appeal questionnaire by the date that it should have and did not anyway include copies of all relevant documents.
4. The applicant does not state whether the application is for a full or a partial award of costs. I note that the applicant does not contend that absent the Council's first reason for refusal, the appeal application would not have been refused planning permission for the Council's second reason for refusal. I have therefore considered this application on the basis that it is for a full award.

Information to Members

5. PPG states that 'Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for

unreasonable refusal of an application'.¹ As will be evident from my appeal decision, these circumstances apply in this case.

6. Nonetheless, a main thrust to this part of the costs application is underpinned by the applicant's contention that LP Policy 46(1) has a wide meaning — in essence that it permits extension of a rural building provided it is not a 'significant' extension — and that the proposed extension is not a significant extension. I have explained in my appeal decision why I consider that this policy has a narrower meaning, which requires regard to be given to the need for the extension, and why the proposed extension is anyway significant in the context of the building to be converted.
7. In explaining this policy to members, officers did transpose the order of the words 'extension', 'alteration' and 'rebuilding' after the word 'significant'. However, I consider that the grammar and punctuation of this policy mean that the word significant applies to all three of the subsequent types of works. It therefore matters not in what order these trailing words are taken. On one occasion officers did incorrectly advise members that this policy prohibits extensions to a building as part of its conversion, though also did explain that a 'significant variance from what the policy requires' — ie to allow an extension to a building that was not needed to facilitate its conversion — would 'risk... the agricultural character' of the building. The clear balance of advice to members was therefore accurate, or of no material consequence, and accordingly I do not consider that officers misrepresented LP Policy 46(1) to members.
8. I consider that officers' comments to members describing the proportions of the proposed extension were broadly accurate and could not have been readily conflated with floorspace increase, since these are two different concepts. It is also reasonable to suppose that members of a Council planning committee have some experience of such matters. Nor did officers suggest to members that there 'would be between a 33-50%' floor area increase, being an inference drawn by the applicant.
9. I agree that at the committee meeting officers could have referred to the applicant's lighting report, though it was available to members as part of the submitted planning application. However, light pollution was not 'a new issue raised by officers' but a matter that arose in response to a member question. Despite what some members may have thought as a result of the officer's comments, light pollution was not a main issue in the officer report and the suggested reasons for refusal in the officer recommendation (which did not refer to light pollution) were not altered in the Council's decision, as the minutes of the meeting confirm. On the evidence before me, it therefore seems unlikely to have been a determinative point for members.

Appeal Questionnaire

10. In its response to the costs application the Council does not concede that it did not send the appeal questionnaire to the applicant by the requisite date, but it does accept that it has no record either way. The Council also accepts that the appeal questionnaire that was sent to the applicant did not include a copy of the Chichester Harbour Conservancy (CHC) comments.

¹ Paragraph: 050 Reference ID: 16-050-20140306.

11. The costs regime is intended to support a well-functioning appeal system and, amongst other things, to ensure that all those involved in the appeal process behave in an acceptable way, including good practice and timeliness. On the evidence before me, I am unable to reach a firm conclusion that there was a procedural failure by the Council to send the appeal questionnaire to the applicant on time. Nevertheless, the absence of a record in this regard kept by the Council is not good practice. Furthermore, the omission of a relevant document from the appeal questionnaire that was sent by the Council is also not good practice, nor was the document therefore received by the applicant in a timely manner. Consequently, I find that the Council has behaved unreasonably in these regards.
12. However, I note that the applicant did not raise any concern with the Council in respect of the appeal questionnaire for over two weeks after the due date. Furthermore, the applicant accepts that the procedural delay in receipt of the CHC comments did not cause any prejudice. Moreover, the applicant does not claim that the Council's behaviour in these matters has caused the applicant to incur unnecessary expense in the appeal process.

Conclusion

13. For the reasons given, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense during the appeal process, as described in the PPG, has not been demonstrated and that a full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR