



Costs Decision

Site visit made on 8 December 2020

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2020

Costs application in relation to Appeal Ref: APP/P3040/W/20/3259439 Agricultural barn, Back Lane, Willoughby on the Wolds LE12 6SP

- 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 and Mrs S Carr for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal to grant approval required under a development order for the change of use of an agricultural building to a dwellinghouse (C3).
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Decision

1. The award of costs is refused.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either: procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
3. The basis for the claim is that the applicants consider that the Council acted unreasonably in that it erred procedurally through a lack of cooperation, withdrew a reason for refusal and provided information that was inaccurate or untrue. In addition, it is claimed that the Council has prevented or delayed development which should clearly be permitted, failed to produce evidence to substantiate the reason for refusal, has applied unsupported assertions and acted contrary to established case law.
4. As set out in my decision, the prior approval procedure for the conversion of agricultural buildings to dwellings requires that an application is made prior to the commencement of the development. This is whether the proposal is limited to a change of use or one also including operational development, as defined by s55 of the Town and Country Planning Act 1990 (the Act). The Council's single reason for refusal incorrectly stated that the works that had taken place a short time before the prior notification application was made constituted 'development' requiring planning permission as defined in the Act.
5. Whilst the Council's statement subsequently conceded that the initial reasoning in the decision notice was incorrect, it retained its stance that the works that had taken place were a commencement of the conversion and it therefore conflicted with a condition of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

6. As a precursive statement, the error in the notice on the status of the works was not decisive to the Council's conclusion. The Council subsequently defended the determination that the extent and nature of the works were a relevant factor in the reason for refusing the application. Although the error meant that the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's reasoned decision was not fully exercised, it did not, in itself, result in an unjustified decision or lead to wasted expense at appeal given the works in question were determinative.
7. The parties accept that a referenced photograph was submitted by the Council was in error. In the light of the application for costs sought against it, I find it was not unreasonable for the Council to provide the missing document to demonstrate no intent to mislead.
8. From the evidence of correspondence between the parties, there is little to substantiate that the Council did not consider the case put before it. Whilst the applicants have championed its own legal advice, this does not prejudice a Council's ability to determine the application as it sees fit. Although the applicants wholeheartedly disagreed with the Council's interpretation of the Class Q procedure, this does not, in itself, demonstrate unreasonable behaviour or the cause of undue delay in the determination of the application. An absence of correspondence relating to any investigative activity carried out by the Council is not a matter for this appeal.
9. In regard to unsubstantiated assertions, it is accepted that the intentions of an individual or group cannot be factually determined and therefore are matters of fact and degree which lie within the scope of a planning judgement. The Council's case explains why it came to the decision it did and it was entitled to reach that conclusion as defined in Class Q. I find no unreasonable behaviour in those terms.
10. In respect of caselaw, the findings in the cases of *Hibbitt v SSCLG* [2016] EWHC 2853 and *Winters v. Secretary of State for Communities and Local Government* [2016] EWHC 3354 are relevant and, although there are inevitable differences in the circumstances of the cases, I find that there is little to demonstrate any misapplication of their principles.
11. Accordingly, whilst I find that the Council erred in defining the works that had taken place as 'development' in regard to s55 of the Act, consistent with my own conclusion, this did not affect the status of those works as a commencement of the conversion of the building. This was the reason for refusing the application under Class Q and is the grounds defended by the Council. That procedural error did not therefore lead to unnecessary or wasted expense in the appeal, as described in the PPG. For this reason, and having regard to all other matters raised, I find an award for costs is therefore not justified.

R Hitchcock

INSPECTOR