



Costs Decision

Site visit made on 7 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3259556 Newton Farm, Access to Newton Farm, Boyton, Launceston PL15 9RL

- 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 Bradley Ellacott for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of an application for prior approval for internal works for the creation of 5 dwelling houses and exterior alterations for the inclusion of windows and doors.
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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 Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. The applicant seeks a full award of costs on the basis of the inadequate determination of the scheme. The applicant has explained he offered the Council the option of allowing a free re-application to redetermine the scheme and also set out case law on how other prior notifications in similar circumstances had been evaluated.
4. The case is made that the Council set out two onerous justifications for refusing the application. One regarded the lawfulness of the building, even though it is argued that the Council know that the building is lawful. The other that the blanket response for a structural survey was not proportionate and could have been avoided if a significant, rather than a superficial, site visit had been undertaken and the substantially built barn acknowledged. The applicant considers that he actively looked to avoid an appeal, offering an alternative route but that the Council's failure to acknowledge the case law or engage in proactive discussions has led directly to the appeal.
5. The Council has commented in their costs response that it acknowledges that the provision of a structural survey was not a requirement to ensure the validation of a Class Q prior notification and the fact that no decision was issued within the requisite period meant that permission was deemed to be granted. Nevertheless, the Council indicate that the scheme could only go ahead if the limitations set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) would be met. As

- the Council dispute that this would be the case, it was appropriate to raise these matters.
6. The Council explain that the issue with the need for a structural survey or the need to demonstrate the structural soundness and the desire to receive information on the history of the agricultural use are consistent with the Council's Class Q Prior Notification Guidance Note (the Class Q Guidance Note) for the submission of Class Q applications.
 7. No response was received of any kind from the applicant until after the 56 day period had expired. It is argued that the appeal process could have been avoided if the applicant had acted proactively in responding to the request for information in accordance with best practice set out in the Guidance. It was proactive of the Council to highlight these issues. The site was visited by a member of the planning department and together with the before and after drawings the determining officer was clearly in a position to reach the entirely logical conclusion on the application.
 8. The request for a free submission being declined is based presumably on a conscious decision made by the applicant who it is assumed felt this was not appropriate to pursue. It is noted that a further application has been submitted which now includes a construction method statement and deletes reference to a rendered wall. The concerns raised regarding the lawfulness of the building are entirely reasonable once comparisons with the permitted building are made. As a consequence, the Council argue that it has acted appropriately and an award of costs is not merited.
 9. Examining these matters, the Council has effectively accepted that it erred in not registering the application when it was first submitted in early December 2019. At that point the 56 day determination period commenced. The requests for more structural information and queries regarding the lawfulness of the building are matters that the Council could raise during the processing of the application, and refuse the application on this basis if it considered that was a justified course of action. However it did not do so within the statutory period. The Council's Class Q Guidance Note on the information requirements to help determine prior notification proposals may be helpful but it does not alter the legal requirements for the submission of a prior notification application.
 10. If the Council had followed the correct procedures for registering the application it should have realised that no decision had been reached within the 56 day period and the application had been deemed to be granted. I note the lack of response from the applicant to the request for a structural survey, and a response may have helped clarify matters, nevertheless, the requirement is on the Council to determine the application, if it wishes, within the statutory period.
 11. One of the options for a Local Planning Authority when considering an application for prior notification is not to respond within the statutory period and thereby accept that prior notification is deemed to be granted. The GPDO allows for such an occurrence. It was therefore reasonable for the applicant to assume that, after the statutory period had passed with no decision, the proposal had been deemed to be granted.
 12. However, some weeks after the statutory period had passed, the Council issued a decision refusing the application. The applicant then set out the case law and

other comments to the Council to seek to explain the legal situation. The applicant indicated that they were minded to appeal and ask for an award of costs, although to avoid this the offer of a re-submission to seek to resolve matters was tabled.

13. The Guidance indicates that the type of behaviour that could lead to a substantive award of costs against a local planning authority may include acting contrary to, or not following, well-established case law. Furthermore, the Council is expected to review their case promptly following the lodging of an appeal. In this case, the Council had the chance, following the e-mails from the applicant to the Council, to review its case prior to and after the appeal being submitted. The information indicates that the Council did not take legal advice on the position at that time. Had it done so and correctly reviewed the case, it should have realised that the application was deemed to be granted.
14. However, in the circumstances with the refusal on record, the applicant had little alternative but to appeal. It was necessary at the appeal stage for the applicant to demonstrate that the proposal had already been deemed to be granted and to cover the other matters in the interests of completeness. I consider that the appeal could have been avoided entirely if the statutory process for determining prior notification applications had been followed and the decision not issued. Furthermore, if the Council had accepted the legal position after it had issued the decision, and sought to resolve matters, it could have substantially reduced the need for the applicant to set out the case at the appeal stage.
15. It follows from the above analysis, that I conclude that the Council has acted unreasonably and this has put the applicant to unnecessary and wasted expense at the appeal stage. A full award of costs is justified in this case due to the actions of the Council through the process and, in particular, the appeal results from the issuing of the decision after the statutory period which then resulted in the need for the appeal.

Conclusion

16. In the light of the above analysis, I have found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

17. 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 Cornwall Council shall pay to Mr Bradley Ellacott, 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.
18. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn INSPECTOR