



Costs Decision

Site visit made on 17 December 2020

by Simon Hand MA

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

Decision date: 08 January 2021

Costs application in relation to Appeal Ref: APP/N1730/X/19/3241148 West Minley Farm, Minley Road, Blackwater, Camberley, GU17 9JX

- 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 Mr Steve Wemyss for a full award of costs against Hart District Council.
 - The appeal was against the part refusal of a certificate of lawfulness of proposed works to a listed building for temp support to building, remove & replace tarpaulin & roof slates and store slates. Additional brackets & temp bracing to frame, repair weatherboarding.
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Decision

1. The application for costs is refused.

Reasons

2. The appellant argues that a full award of costs should be made because the Council has consistently frustrated every effort made by the appellant to protect the listed barn. The Council, according to this argument, want the appellant to undertake an expensive scheme of repairs which he cannot afford and have therefore refused any lesser suggestions. An application for listed building consent for the works was made but not determined. The Council took so long to fail to issue a decision that the 6 month period for making a non-determination appeal was exceeded and the appellant was left with no choice but to make an application under s26H.
3. The Council response is that the works proposed are clearly unlawful in that they require listed building consent and there is no evidence from the appellant that this opinion is incorrect.
4. Unfortunately the costs arguments by both sides have strayed from the question of unreasonable behaviour in this appeal to the wider issue of the appellant's attempts to protect the barn or, as the Council see it, his failure to produce a scheme to repair it.
5. The appellant did make an application for listed building consent, and this was the correct vehicle for pursuing questions of short or long term maintenance and repair and these and all the other grievance could have been aired at appeal. Unfortunately the process was allowed to drag on for so long the right to appeal against non-determination was lost and for some reason the application was then withdrawn. The subsequent application under s26H was

then made but this is not a substitute for listed building consent nor a suitable vehicle to determine the best future for the barn.

6. An application under s26H, like any LDC application, is limited to the sole question of whether the proposed works are lawful. According to s26H(2) the works would be lawful if they "*would not affect the character of the listed building as a building of special architectural or historic interest*". In this case that is a relatively simple question to answer and the answer was obvious. The Council were correct to refuse the application and do not appear to have acted unreasonably in doing so.

Simon Hand

Inspector