
Costs Decision

Site visit made on 24 May 2021

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 27th May 2021

Costs application in relation to Appeal Ref: APP/B2355/W/20/3260238 Higher Mount Pleasant, Sand Beds Lane, Off Gincroft Lane, Edenfield BLO 0GQ

- 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 D Carloni for a partial award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of an agricultural building used in connection with an existing agricultural unit to 4 dwellings plus associated operational development.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for a partial award of costs relates to the first reason for refusal. This states that the change of use of the building would be undesirable due to its isolated location in relation to basic services and facilities and the limited private outdoor space to be provided. It is argued that the Council have prevented and delayed development which should clearly have been permitted having regard to the development plan, national policy and any other material considerations. The applicant also claims that the Council have acted contrary to well-established case law. The PPG indicates that, in such circumstances, costs may be awarded against an authority.
4. As set out in my decision letter, the PPG makes clear that the Class Q permitted development right deliberately does not apply a test in relation to the sustainability of a location. Moreover, this was further clarified in a High Court judgement in 2017¹ which the Council should have been aware of. In the light of this clear guidance I consider that the Council have acted unreasonably by seeking to refuse the application because of what it considered to be an isolated and unsustainable location.

¹ East Hertfordshire DC v SSCLG & Tepper [2017] EWHC 465 (Admin)

5. The reason for refusal also indicates that the proposal is unacceptable due to the size of the gardens the dwellings would be provided with. However, this is controlled by the regulations which specifically restricts the maximum size of the garden space. As such, the regulations clearly require only small gardens to be provided and consider that this would provide acceptable living conditions for future occupiers. Therefore, I also consider that the Council have acted unreasonably in making the size of the gardens part of the reason for refusal.
6. Overall, I consider that this reason for refusal could have been avoided, and the Council have acted unreasonably in imposing it given the requirements of the regulations. Although only one part of the applicant's submission at appeal stage, nonetheless the applicant incurred unnecessary costs in having to address this reason for refusal in the appeal process.
7. Therefore, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and thus a partial award of costs is justified.

Costs Order

8. 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 Rossendale Borough Council shall pay to Mr D Carloni, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Rossendale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alison Partington

INSPECTOR