
Costs Decision

Site visit made on 10 August 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2021

**Costs application in relation to Appeal Ref: APP/F2415/W/21/3270900
Agricultural Building, Debdale Lane, Smeeton Westerby, Market
Harborough LE8 0QD**

- 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 William Arnold for a full award of costs against Harborough District Council.
 - The appeal was against the refusal of prior approval for change of use of an agricultural building to a dwellinghouse (Class C3) (1 larger dwellinghouse) and for building operations necessary for the conversion.
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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 advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for a full award of costs is on the basis that the Council acted unreasonably on procedural and substantive grounds, relating to the planning application process and the merits of the application respectively. Moreover, the applicant suggests that the Council has failed to co-operate with the applicant; made vague, generalised, or inaccurate assertions about the proposals impact, which are unsupported by any objective analysis; and not determined similar cases in a consistent manner.
4. The applicant has suggested that, despite concerns with aspects of the proposal, the Council did not contact him during the determination of the planning application and that, had contact been made, specific additional information would have been provided. Nevertheless, it is evident from my main decision that the aspects of the Council's case related to the structural integrity of the building are no longer a requirement of the prior approval process. It is therefore clear that correspondence between the main parties would have overcome the concerns with the proposal and avoided the appeal.
5. There is no claim of the Council failing to co-operate in the appeal process. Similarly, the applicant has also referred to Paragraph 39 of the National Planning Policy Framework (the Framework), but this refers to pre-application discussion and there is no reference to this in the application. I have therefore disregarded its content in relation to this claim. However, bearing the above in

mind, I consider that the Council did not behave in a cooperative manner during the application process.

6. Although I am not aware that the Council is under any statutory obligation in respect of the manner in which it carries out a site visit, the Council has suggested it only inspected the site from some distance and relied on photographs of the building included in the planning application. Notwithstanding the point above regarding the structural requirements of prior approval, or the relevance of the judgement in *Hibbitt*¹, had the Council carried out a closer inspection of the internal and external fabric of the building, it would have been apparent that the quantity surveyor's report could have been relied upon. With this in mind, I am satisfied that the Council made inaccurate and unnecessary assertions about the impact of the proposal. The proposal should not have been refused prior approval on the grounds advanced in the reason for refusal. The refusal of approval by advancing incorrect assertions about the proposal's impact therefore constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG.
7. The Council has also determined a number of similar applications for prior approval and, unlike the subject building, none of the buildings in the applications listed appear to have gone through the same rigorous interrogation of the structural integrity of the subject building. Moreover, foundations were not inspected and/or structural surveys provided. I have no reason to dispute the evidence put to me by the applicant and the Council has not provided anything to the contrary, either as part of the appeal or this application. Therefore, based on the evidence before me, it therefore appears that the Council has not determined similar cases in a consistent manner.
8. I accept that the Council was entitled to exercise its judgement on matters relating to the impact of the proposal but it did so in relation to matters no longer relevant to prior approval and took a course of action that it does not appear to have taken with other similar applications. The failure of the Council to engage with the applicant during the planning application process therefore left this matter unresolved. As such, I consider that the applicant, in having to address this matter as part of the appeal, has incurred unnecessary and wasted expense in the appeal process.
9. I consider that it has been demonstrated that the Council behaved unreasonably in respect of procedural and substantive grounds associated with the processing of the associated planning application. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Harborough District Council shall pay to Mr William Arnold, 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.

¹ *Hibbitt and another v Secretary of State for Communities and Local Government* (1) and *Rushcliffe Borough Council* (2) [2016] EWHC 2853 (Admin).

11. The applicant is now invited to submit to Harborough District 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.

Paul Thompson

INSPECTOR