



Costs Decision

Site visit made on 6 September 2021

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Costs application in relation to Appeal Ref: APP/P1615/W/21/3274587 Underhill Farm, Ruddle, NEWNHAM, GL14 1DS

- 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 Steve Yarworth for a full award of costs against Forest of Dean District Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of existing agricultural barn to 1No. residential dwelling and associated building operations.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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 PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both. The application was made in writing and therefore there is no need to rehearse the detailed points made.
4. The PPG makes it clear that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of an application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The basis of the costs application is that the Council behaved unreasonably during the application process in that it failed to respond in a timely manner and prevaricated over matters relating to external lighting, biodiversity and curtilage. It allegedly also failed to take a reasonable approach to amendments to the application which would have been sufficient to overcome the reason for refusal. Numerous email exchanges between the parties are attached to the applicant's submissions to demonstrate that attempts were made to resolve outstanding matters. The applicant in this costs application

contends that the case officer's recommendation was overturned by senior staff within the Planning Department of the Council.

6. The Council in response confirms the sequence of events and explains that it sought and obtained an extension of time to consider the application. It is clear to me that there were a number of issues that needed clarification, not least the matter of ecology. The applicant suggests that because Natural England did not offer any objection to the scheme that this should have been sufficient for the Council to set aside matters relating to protected species. However, the Council has a duty as competent authority to carefully consider this matter and assess biodiversity issues against relevant development plan policies. I see nothing wrong in the Council's approach in this case.
7. Further, I do not see that the Council failed to understand the difference between Prior Approval cases and applications for planning permission when it dealt with the proposed conversion of the appeal building. It is though incumbent upon applicants to clarify the extent of structural works necessary to take advantage of permitted development under Part Q.
8. Neither do I agree that the Council has been dilatory in providing information to the applicant. The Council uploads information and consultation responses on to their web site on a regular basis. A busy local planning authority cannot possibly spoon-feed applicants and it is incumbent upon applicants to access the Council's website in order to obtain information that is publicly available.
9. Whilst it may be desirable on grounds of consistency and transparency within the planning system for recommendations of case officers to be supported by senior officers, the overturning of the case officer's recommendation does not in itself constitute unreasonable behaviour. At the end of the day, it is the quality of decision-making that is most important.
10. Having had regard to the totality of the information before me, it seems to me that there was a reasonable chance that even if the Council had explicitly considered all of the applicant's submissions, it would still have made the same decision. I am therefore unable to conclude that the Council prevented or delayed development that should clearly have been permitted. From my understanding of the appeal, the matter of dispute was a matter of principle as to the extent of alterations to the building.
11. Notwithstanding the intention of the regulations to boost housing delivery and the 'light touch' prior approval procedure, there will be situations where development is not acceptable. This is a matter of planning judgement. Based on my findings, I am satisfied that the Council did not behave unreasonably in refusing the application. Accordingly, it has not been demonstrated that the applicant has incurred any unnecessary or wasted expense as a result of any unreasonable behaviour on the part of the Council.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Gareth W Thomas

INSPECTOR