
Costs Decision

Site visit made on 22 February 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Costs application in relation to Appeal Ref: APP/R3325/W/21/3282898 Land OS 9521 Part, West Coker Road, Yeovil, Somerset BA22 8TB

- 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 Mead for a full award of costs against South Somerset District Council.
 - The appeal was against a 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 the agricultural building to 1 No. residential dwelling (Class C3).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably in both procedural and substantive terms. Firstly, he considers that had the Council outlined their concerns at an earlier point this would have allowed time for additional information or clarification to be provided. Secondly, the applicant considers that the Council's interpretation of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(the Order) was incorrect and considerable weight should have been given to a relevant appeal decision¹ supplied. Finally, he contends that the Council made misplaced assumptions that were not supported by the evidence provided. On this basis, he considers that the appeal could have been avoided.
4. Amongst other things, PPG further indicates that local planning authorities will be at risk of an award being made against them if they fail to co-operate with the other party, if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations or if they fail to produce evidence to substantiate each reason for refusal on appeal.

¹ Appeal reference APP/W3330/W/21/3268761

5. The applicant points to an email exchange² as evidence of a lack of co-operation by the Council. However, an immediate response was sent by the Council to the applicant's initial exploratory email dated 7 June 2021. The email indicated that the Council would respond in the future but did not commit to a date. This does not amount to evidence of a failure to cooperate.
6. Moreover, there is little evidence before me to demonstrate that the provision of additional information by the applicant at an earlier point would have led to a different outcome and the appeal statement submitted by the Council reinforces that. Neither is it shown that local planning authorities are under an obligation to update or allow the provision of additional information under the exacting time constraints that apply to the procedure for prior approval applications under paragraph W, Part 3 of the Order. Rather, paragraph W(3) makes specific provision for the local planning authority to refuse an application, where in its opinion the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposal complies with any conditions, limitations or restriction specified and applicable to the development in question.
7. In any event, PPG stipulates that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal³ whereas the concerns raised by the applicant relate primarily to the handling of the prior approval application. Accordingly, unreasonable behaviour on this basis is not shown.
8. It will be seen from my decision, having had regard to the appeal decision highlighted, that I found the proposal would not fall within the permitted development outlined in Class Q of the Order. The determination primarily required an exercise of judgement. Although the Council's officer report does not make specific reference to the appeal submitted, it is not shown that had it done so it would inevitably have resulted in a different conclusion as the question of weight to be attributed to material considerations is ultimately one for the decision maker. There were differences between the facts of the appeal proposed and the case cited which meant that, although of relevance, it was not directly comparable in terms of the nature and extent of building operations involved. Consequently, it follows that I cannot agree that the Council's interpretation of the Order and PPG was incorrect, and they did not act unreasonably in refusing the proposal.
9. Furthermore, references were made to the Structural Report⁴ in the Council's Officer report such that they clearly had regard to it. It was not unreasonable of the Council to deduce from the content of the report submitted that new roofing and insulation would be unlikely to be supported by the existing structure. Furthermore, considering the Council's appeal statement, even had the addendum structural information been provided earlier, or a consultation undertaken with a different structural engineer, then the Council's judgement would have been unlikely to be fundamentally different. Overall, the Council exercised its judgement regarding the central issue in this case in a reasonable manner.

² Appendix 1, Appellant's Statement of Case

³ Paragraph 47 Reference ID: 16-047-20140306

⁴ Structural Report prepared by Fairfield dated August 2020

10. Therefore, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG. As I am not persuaded that the Council have acted unreasonably in this case, it follows that the applicant was not put to unnecessary or wasted expense in testing their judgement at appeal.

Conclusion

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

Helen O'Connor

Inspector