



Costs Decision

Site visit made on 8 March 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Costs application in relation to Appeal Ref: APP/J1860/W/21/3284438 Glebe House, Bayton DY14 9LS

- 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 and Mrs M Cook for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for the change of use of an agricultural building to a dwellinghouse.
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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. Paragraph 049 of the Planning Practice Guidance (PPG) sets out the examples of unreasonable behaviour by local planning authorities which includes preventing and delaying development which should clearly have been permitted; failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. Taking each reason for refusal in turn, Paragraph W(3) of the GPDO states that an application for prior approval may be refused where it does not comply with any conditions or limitations applicable to Class Q or where there is insufficient information to establish such compliance. The Council contend that insufficient information has been provided to establish that the building is of substantial construction.
5. As set out in my decision letter, the PPG makes clear that the statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications and is a light-touch process. The Council in seeking a construction method statement to demonstrate compliance with Building Regulations, in my view, is an unnecessarily onerous requirement in the context of the prior approval legislation. Moreover, the applicant's evidence including the Building Survey Report indicates that the building is capable of conversion. In light of this I find that the Council have acted unreasonably by seeking to refuse the application on these grounds.

6. Turning to the second reason for refusal the PPG acknowledges that some building operations will be necessary. As seen from my decision I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision relating to the impact on the character and appearance of the area and the setting of Glebe House. This is a matter of planning judgement, and it is apparent to me that the Council had legitimate concerns based on the evidence provided and has substantiated its position on appeal rather than vague, generalised or inaccurate assertions. As a result, it follows that I do not agree that the Council has acted unreasonably in respect of this matter.
7. In respect of the third reason for refusal the test in relation to the use is the balance of probabilities on the relevant date, rather than at the time of the Council's site visit. The appellant's have provided a letter confirming that the building was in agricultural use on 20 March 2013. This has not been challenged by the Council nor is there any evidence to suggest otherwise. As such, I am of the view the Council acted unreasonably in refusing the application on this ground.
8. Whilst the appeal would have still been necessary in respect of the effect upon the character and appearance of the area and the setting of a heritage asset, I consider that the applicants would not have expended resources in countering the Council's position in respect of reasons for refusal 1 and 3.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in respect of the first and third reason for refusal, as described in the Planning Practice Guidance, has been demonstrated and that a partial 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 Malvern Hills District Council shall pay to Mr and Mrs M Cook, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's first and third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicants are now invited to submit to Malvern Hills 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.

B Thandi

INSPECTOR