
Costs Decisions

Site visit made on 22 March 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th April 2022

Costs application in relation to Appeal D Ref: APP/Z1510/X/20/3262845 Butlers Farm, Colne Road, Bures C08 5DN

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Braintree District Council for a full award of costs against Mr Paul Roberts.
 - The appeal was against the refusal of the Council to issue a notice of a certificate of lawful use or development (LDC) for two dwellinghouses (Class C3).
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Costs application in relation to Appeal E Ref: APP/Z1510/C/20/3283082 Butlers Farm, Colne Road, Bures C08 5DN

- 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 Braintree District Council for a full award of costs against Mr and Mrs Paul Roberts.
 - The appeal was against the refusal of planning permission for two dwellings.
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Decision

1. The applications for an award of costs are refused.

Background

2. The Planning Practice Guidance (the 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.

Reasons

3. The Council considers that the appellants have acted unreasonably in submitting multiple appeals within a short timeframe and not taking advice that there was no prospect of planning permission being granted and withdrawing the application.
4. The Guidance sets out that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. It will be seen from my decisions that the appellants have made their cases and provided evidence in support of them. Had they followed the advice of the Council and withdrawn their applications they would not have been afforded the opportunity to do so.

5. With respect to Appeal D, the appellant admitted that the building had not been used continuously for the relevant period and this was fatal to his appeal. However, he argued that the LDC should be granted on the basis of the original design and intended use of the building and provided evidence in the form of the plans and construction. My decision sets out that an LDC could not be issued on that basis, but the appeal gave the appellant the opportunity to test his argument.
6. In respect of Appeal E, it will be seen from my decision that I concur with the view of the Council that the development is not in accordance with the development plan. However, with respect to the consideration of Policy RLP38 of the Local Plan, it was necessary to assess whether or not the policy applied in this case. Had I have reached a different conclusion in respect of this and the other main issues which I identified, the planning balance and the decision may have been different.
7. Drawing these points together it will be seen that I do not consider that the appellants acted unreasonably in seeking a determination of their applications by the Council and in submitting their appeals.
8. The appellants have submitted five appeals relating to three buildings. Three of the appeals were against decisions made by the Council with the third appeal being a further iteration of the proposals submitted in respect of the first two. The two appeals which have been submitted for Barn 3 and which are particularly referenced in the applications for costs relate separately to an application for an LDC and an application for planning permission.
9. Given that the appeals relate to three buildings I do not consider that the number of appeals is excessive or that the appellants have acted unreasonably in submitting them within a short timescale. Furthermore, I am not aware of any limitation on the number of appeals which can be submitted for consideration on the same or adjacent sites at the same time.
10. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Dyer

Inspector