



Costs Decision

Site visit made on 3 May 2022

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 MAY 2022

Costs application in relation to Appeal Ref: APP/Z2505/W/22/3290799 The Farmyard, Mill Lane, Kirton End, Boston, Lincolnshire PE20 1PB

- 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 Lincolnshire Game for a full award of costs against Boston Borough Council.
 - The appeal was against a refusal to grant consent, agreement, or approval to details required by a condition of a planning permission.
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Decision

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

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. In December 2019, the Council determined that an application for the change of use of an agricultural building to a dwellinghouse was in accordance with Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO)¹. A number of conditions were attached to the approval including condition 5 which required the submission of details of boundary treatments.
4. The appellant submitted an application stating that no boundary treatment was to be erected within the confines of the red line demarking the appeal site on the approved plan of the original permission ref 19/12/1601.
5. This application was refused by the Council. The reason for refusal refers to other boundary treatments that have been erected on site outside of the appeal site and states that these cannot fulfil the requirements of condition 5.
6. At the time of my site visit, a part hedge and part wall had been erected around the line marked by the blue line, trees had been planted within the wider site and stone walls had been erected within the wider site. I understand from the Council that two planning applications to change the use of that larger site from agricultural use to residential use have been refused². However, during the course of the appeal I was advised that planning permission has

¹ B/19/0444 (the original permission)

² B/20/0492 & B/21/0118

been granted for the use of the area between the red and blue lines on the approved plan for residential purposes³.

7. The applicant considers that condition 5 is not reasonable, necessary or practically enforceable. Furthermore, the Council did not attach such a condition to a similar application under Class Q of the GPDO.
8. Although the appeal has not been submitted against the addition of the condition itself, under paragraph W(13) of Schedule 2, Part 3 of the GPDO the Council may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. In this instance the provision of boundary treatment is reasonably related to the use of the building as a dwelling.
9. Although I have found that the provision of no boundary treatment is acceptable in this instance, that does not equate to the condition not being reasonable or necessary in the first instance. When the original permission was granted, the appeal site was within agricultural land and a condition was necessary to ensure that the proposed use remained within the application site as defined on the approved plan, separate from the surrounding agricultural land. Moreover, I note from the officer report regarding the latest planning permission, that the approval was predicated on the changing character of the land and surrounding area since the original planning permission had been granted. At the time of the original approval therefore, the condition was necessary and reasonable. Furthermore, such a standard condition as this, which has been drafted appropriately, would be enforceable.
10. The fact that it has not been applied to other permissions under Class Q is not unusual as each site should be considered on its own merits. The Council has explained how the two sites are different and I see no reason to disagree.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR

³ B/22/0085 (the latest permission)