



Costs Decision

Site visit made on 24 August 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st August 2022

Costs application in relation to Appeal Ref: APP/C1570/W/21/3282677 Poultry Boulding, Woodhams farm, Cutlers Green, Thaxted CM6 2RH

- 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 Stuart Brock for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of an application for prior approval for development described as 'conversion of agricultural building into single dwelling.'
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Patently this is a two stage test. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. 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 the planning application can be taken into account in determining whether or not costs should be awarded.
3. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include preventing or delaying development which should clearly be permitted.
4. The crux of the applicant's case in regard to their claim for costs concerns the reasons why, prior approval in this case, was refused and thus whether an appeal could, or perhaps should, have been avoided. The applicant has also made a case for the award of costs based on the Council not acknowledging or responding acceptably to an allegation that they failed to determine the application for prior approval within the prescribed period therefore. Since I have given a view on this matter in the accompanying appeal decision, I will not repeat myself here.

5. The Council refused prior approval on the basis that, with regard to paragraph Q.2 (1) (e) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3. In that context, they found harm in regard to the fact the building was in an unsustainable location and that it would detrimentally affect the setting of a listed building.
6. I have found, in the accompanying appeal decision, that the Council were incorrect in their interpretation of what is meant by impractical or undesirable for the purposes of the GPDO and that such does not extend to the building's situation in the open countryside, away from settlements, having regard to any settlement or spatial strategies for new development. In the same, I have also explained that, taking into account the scope of Class Q in regard to listed buildings and the Council's views on external appearance of the building, their findings seemed contradictory as to any evidenced harm to the setting of a listed building, beyond that associated with a similar application for express planning permission. By implication, I have explained that these matters are also distinct from what is to be taken from Class Q's assessment of the practicality and desirability of a building's location.

Conclusion

7. Should the prior approval matters of Class Q have been applied correctly, as per the interpretation set out by PPG, and taking into account the Council's findings on all other matters, it seems sufficiently clear that prior approval should have been granted. Which would consequently have obviated the need for the appeal. Such a position, as adopted by the Council in refusing prior approval, was therefore unreasonable. It has put the applicant to unnecessary and obviously wasted expense in the time, effort and resource that it has taken to form a case and argue it at appeal. An award of costs is therefore justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Mr Stuart Brock, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Uttlesford 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.

John Morrison

INSPECTOR