



Costs Decision

Site visit made on 27 September 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/J1860/W/22/3300751

Bentley Farm, Holt Heath, Worcester WR6 6TX

- 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 James Brookes for a full award of costs against Malvern Hills District Council.
 - The appeal was against a refusal of prior approval for change of use of an agricultural building to a dwellinghouse.
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Decision

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

Reasons

2. The 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 contends that the Council has behaved unreasonably as it failed to produce evidence to substantiate each reason for refusal on appeal and made vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. These are also some of the examples of unreasonable behaviour by local planning authorities set out in the PPG.
4. There were two reasons for refusal in the decision notice. Both reasons are complete, precise and relevant to the application. The first reason relates principally to the extent of the building works. The decision notice explains that the proposed works would go beyond what might be considered reasonable for a conversion. The Council's officer report explained in more detail why and included commentary on the appellant's initial and additional structural report. It also expressly referred to the guidance in both the PPG and case law in *Hibbitt*¹.
5. I am satisfied the Council gave due consideration to the proposal under the criteria of the Prior Approval process. The Council referred to the changes to the PPG following *Hibbitt* and acknowledged the structural load-bearing capacity of the building. However, it questioned the extent of works, which include significant amounts of glazing. As was made clear in *Hibbitt*, and which was discussed in my decision, the extent of the works themselves is not dispositive and it is therefore for the decision-maker to assess the extent of the

¹ *Hibbitt v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin)

works and decide whether they fall within, or go beyond, the statutory limits with regards a conversion or a rebuild. I am satisfied the Council sufficiently set out its concerns about the extent of the proposed building operations when applying its planning judgement to justify its decision, based on the evidence before it. The Council is not under obligation to seek professional advice on structural matters for Prior Approval Class Q applications. The submitted evidence provided sufficient information for me to determine the appeal, and I am not a professional structural engineer.

6. The second refusal reason relates to the eventual design and appearance of the agricultural building once the proposed building operations have been undertaken to convert it into a dwelling. The Council had concerns about the transformation of the building, including the extent of large areas of glazing, and was of the view the building would lose its agricultural appearance and become too domesticated. Although I disagreed with the Council on this matter, the Council was entitled to come to the conclusion it did and set out its reasoning.
7. The appellant also alleges that the Council has not determined similar cases in a consistent manner. Whilst consistency is important, all decisions turn on their own particular circumstances based on the facts before each decision-maker at the time. The examples of the buildings and proposals that were brought to my attention were different to the appeal building and therefore are not directly comparable.
8. Overall I find the Council had reasonable concerns about the proposal and its impact which justified its decision. As I have found the Council has not acted unreasonably, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

9. I find that unreasonable behaviour, resulting in unnecessary or wasted expense at appeal as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

K Stephens
INSPECTOR