



Costs Decision

Site visit made on 15 November 2022

by C Shearing BA (Hons) MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Costs application in relation to Appeal Ref: APP/X1545/W/21/3286141 Oak Nursery, Hackmans Lane, Purleigh CM3 6RJ

- 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 Coverley for a full award of costs against Malden District Council.
 - The appeal was against the refusal of prior approval for conversion of an agricultural building into a 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 costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably through failure to provide evidence to support their case and properly assess the proposed development, including failure to undertake a site visit.
4. The appellant states that instead of undertaking a site visit to view the condition of the roof, the Council relied on photographs taken as part of an earlier application in 2019. This claim is not disputed by the Council. Since then, works have been undertaken to improve the condition of the roof.
5. The provisions of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) do not specifically require the Council to undertake a site visit as part of their assessment of this application. Nevertheless, it is clear from the Council's assessment that the condition of the existing roof was an important factor in their consideration of the application. Had a site visit been undertaken, this would have highlighted a change in the circumstances since 2019. In particular it would have been evident that the roof did not have the same uneven surface which contributed to the Council's concerns that the external dimensions of the roof may need to change.
6. In addition, the appellant submitted detailed sections of the profile of the roof demonstrating that the size of the roof did not need to change to accommodate the new roof material. No reasonable evidence has been provided to substantiate the doubt that was cast over the contents of that drawing, or why

the proposal did not otherwise conform to the requirements of the GPDO. While the applicant did not provide a structural report, it is not evident that one was specifically required, particularly in light of the applicant's photographs of the internal roof structure where a combination of wooden and metal support frames can be seen. Again, the stability of the existing roof structure could have been observed through a site visit.

7. Overall, I consider the Council behaved unreasonably through failure to substantiate the reason for refusal and through making generalised assertions about the proposal's impact. These are among the examples of unreasonable behaviour given in the PPG and this behaviour gave rise to the unnecessary expense in the appeal process.

Conclusion

8. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

9. 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 Maldon District Council shall pay to Mr Coverley, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Maldon 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for the detailed assessment by the Senior Courts Costs Office is enclosed.

C Shearing

INSPECTOR