
Costs Decision

Site visit made on 24 November 2022

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Costs application in relation to Appeal Ref: APP/P3040/W/22/3304704 Soho Bonington, 40 Melton Lane, Sutton Bonington LE12 5RQ

- 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 Raffaele Russo for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for 'Change of use of former agricultural buildings to a single dwelling and swimming pool'.
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Decision

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

Reasons

2. The 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 PPG states that 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. Examples include preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The appellant states that the Council has acted unreasonably in relation to the grounds for refusal. With regards to the first reason for refusal, the appellant contends that the Council has misdirected itself, in allegedly relying on the limitations of Class Q of the GPDO¹, which provides for the change of use of agricultural buildings to dwellings, to inform its assessment, rather than considering and adequately explaining why the proposal is unacceptable in relation to Policy 22 of the Rushcliffe Local Plan Part 2: Land and Planning Policies, Adopted October 2019 (LP). In doing so, the appellant also contends that the Council has relied on case law, which it has withheld, but is relevant to a change of use of agricultural buildings to dwellings under Class Q of the

¹ Class Q of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

GPDO, and thus is not relevant to the consideration of a full planning application.

5. The appellant also contends that the Council has failed to acquaint itself properly with the circumstances of the case, for example, by incorrectly assuming that the development includes a new steel portal frame.
6. With regards to the second reason for refusal, the appellant states that the Council has provided no evidence to support its reasoning on landscape grounds. Additionally, the appellant considers that the Council's concerns relating to domestic paraphernalia could have been addressed through the imposition of planning conditions.
7. The Council's case and the justification for the first reason for refusal is set out within the Decision Notice (DN) and Committee Report (CR). The parties agree that planning judgement is required to ascertain if a particular development amounts to re-use and adaptation. Within both paragraph 40 and 41 of the CR, the Officer has referenced the relevant policy test of re-use and adaptation. The CR sets out a summary of the level of work undertaken and considers that this is tantamount to the construction of a new building, rather than a conversion. It then goes on to conclude against the relevant policy test that the proposals would not comprise of re-use and adaptation. Whilst I appreciate that there is some variation in terminology from the policy wording (the phrase conversion being used by the Council following reference to the Structural Engineers report, which uses the same wording), I consider the Council's case to be clear, that they consider the works exceed re-use and adaptation of the buildings.
8. Whilst the parties may disagree on this matter, and whilst I have reached a differing judgement, the Council has exercised its duty to determine the planning application in a reasonable manner.
9. Neither the DN, the CR or the Council's Statement of Case relied explicitly on the GPDO and the limitations/conditions therein, or case law. Nor does the assessment of the proposal suggest that regard has been had to such documents instead of the LP. Based on the evidence before me, I do not consider that the Council has misdirected itself in this regard.
10. There is disagreement between the parties as to whether the proposal required a new steel portal frame. The appellant suggests that this was an incorrect assumption by the Council resulting in a failure to properly understand the case.
11. At the application stage, the Council was provided with a letter from LT Simpson Chartered Engineer, dated 10 May 2021, which provided only limited detail as to the structural work necessary for the proposal and was supported by no detailed drawings. The 'existing' plans provided with the application itself showed the buildings having been modified and did not include structural detail. At two different stages of the appeal process, the appellant has supplemented the information relating to the extent of the structural work undertaken, demonstrating more clearly the retained and new steel work.
12. Given these circumstances, along with the retrospective nature of much of the work, it is understandable that the Council may have had difficulty in establishing the physical condition of the building at the various stages. In any

event, the concerns of the Council relate to more than just the steel frame itself, and so, even if this had been clear, it is unlikely that the appeal could have been avoided.

13. With regards to the second reason for refusal, whilst the Council has not commissioned its own landscape advice, the DN and CR set out sufficiently the Council's reasoning for finding harm in relation to landscape character. Again, this is a matter of planning judgement and I do not consider the position taken by the Council to be unreasonable. In reaching its decision, it was appropriate for the Council to consider not just the alterations to the buildings themselves, but the external changes that can accompany residential use, such as parking requirements and garden areas, and associated domestic paraphernalia. Whilst a condition could be imposed to control parking or remove permitted development rights for development within the curtilage of the dwelling, I have not been provided with any compelling evidence to suggest all domestic paraphernalia can be controlled in this way, such as outdoor seating, sun canopies, clothing driers, children's play equipment et cetera. Therefore, the Council needed to be cognisant of all implications of granting permission.
14. Accordingly, the Council has not acted unreasonably in reaching the conclusions that it did and refusing the application. The Council has exercised its duty to determine this planning application in a reasonable manner, and so the appeal could not have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

S Brook

INSPECTOR