



Costs Decision

Site visit made on 22 December 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Costs application in relation to Appeal Ref: APP/D2510/W/22/3300279 Large Agricultural Barn to the west of Old Woodhall Road, Easting 520874, Northing 366852

- 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 R Read for a full award of costs against East Lindsey District Council.
 - The appeal was against the failure of the Council to give notice within the prescribed period of a decision on an approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 ("the GDPO") for the conversion of one section of an existing agricultural barn into "No. small dwelling houses and demolition of the other part of the barn.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The application is for a full award of costs. No response to the applicants' costs application has been provided by the respondent.
3. The application for costs is brought on a procedural basis. In particular, that the respondent has failed to adhere to the statutory period for determination of the application, that it was out of time for issuing a decision and it failed to recognise it had made an error during the course of the appeal process. An example of unreasonable behaviour includes non-compliance with procedural requirements.
4. The GDPO sets out strict time requirements in which an application for prior approval must be determined. In respect of the appeal scheme the relevant statutory period is 56 days. Subject to an application being comprised of the correct information as set out in Part 3, Class W(2) together with payment of the appropriate fee, the statutory time period is commenced the day after. The incidence of weekends and bank holidays are of no relevance in the determination of the statutory period.
5. I have concluded that the Council failed to follow the correct procedure for calculating the statutory time period. As the limitations and restrictions of

Class Q do not preclude the building from qualifying for a change of use and given that the Council did not issue their decision within the statutory period, prior approval is deemed to be granted and the respondent is not therefore entitled to consider impacts on heritage assets, highway safety and protected species because the respondent's decision was out of time.

6. I find that the respondent has behaved unreasonably in failing to accept that the 56-day statutory period had elapsed. The appeal could have been avoided in its entirety if the statutory process for determining the prior approval had been followed by the respondent, or if the respondent had recognised the error it had made in calculating the statutory period and in issuing a notice of its decision out of time. This has caused the appellant to incur the unnecessary costs of preparing for an appeal and demonstrating that the appeal scheme had been deemed to have been granted.

Conclusion

7. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 East Lindsey District Council shall pay to Mr R Read, 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 East Lindsey 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.

E Brownless

INSPECTOR