



Costs Decision

Site visit made on 7 June 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 04 July 2023

Costs application in relation to Appeal Ref: APP/Y1138/W/22/3307104 Higher Edgeworthy, Nomansland, Tiverton, Devon EX16 8NN

- 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 and Mrs Tom and Aimee Mogford for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal of planning permission for prior notification for the change of use of an agricultural building to a dwelling under Class Q.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the PPG) advises that 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.
3. Amongst other matters, the PPG is clear that a Planning Authority could be vulnerable to an award of costs against it if, in determining applications, they acted contrary to, or did not follow, well established caselaw and by not determining similar cases in a consistent manner.
4. The Appellants maintain that the Council did not correctly consider and apply relevant case law, planning policy and definitions, and has not been consistent in terms of the determination of similar cases under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
5. In terms of the Council's concerns regarding whether one of the buildings at the site was last used for agricultural purposes, it will be seen from the appeal decision that I concluded that the proposal satisfied the requirements of paragraph Q.1(a) of the GPDO. Such a conclusion was a judgement reached based on the details and information provided.
6. Whilst it has been noted that the Council considered that use of the building for joinery was not temporary and resulted in that building not having been last in use for agriculture, I have come to a different conclusion given the circumstances that were put to me. However, whilst I have come to a different conclusion to that of the Council, as above this matter required that a judgement be made, and the Council gave its reasons and provided analysis of

information provided in support of the application. In that regard, while I disagree with the Council, I do not find that they acted unreasonably.

7. With regards to the contention that the Council acted unreasonably by failing to follow well established case law and did not determine similar cases in a consistent manner, I have been referred to the judgement handed down in *Hibbitt v SSCLG* [2016] EWHC 2853 (the Hibbitt Case). As noted in the appeal decision, the Hibbitt Case established that there was a difference between a conversion and a rebuild and, importantly, that it was a matter of legitimate planning judgement as to where the line between the two is to be drawn.
8. The Council's Officer report explained why the planning authority considered the extent of works to buildings that would comprise the proposed dwelling, went beyond that which might be considered reasonable for a conversion and therefore constituted a new build. Reference was made to the Hibbitt case in its assessment. Whilst it will be seen from the decision that I have no concern regarding the works required to convert some of the buildings at the site, I have agreed with the Council in respect of one substantial existing building structure. In that regard, the Council cited the removal of existing cladded walls, and the roof, taking the building back to its skeletal form. I have concluded that the Council was correct in that assessment and that therefore the proposal was not a conversion and could not be considered to be permitted development under Class Q of the GPDO.
9. In terms of consistency in decisions, whilst I was provided with some details of those other approvals by the Council and other planning authorities, I did not have sufficient information such that I could consider all the circumstances that led to those applications being approved. However, as noted in the appeal decision, the details that were provided of these approvals does suggest that whilst substantial works were required, predominately it appears that the relevant buildings would not be starting from a point where the structure could be described as skeletal or minimalist.
10. Accordingly, I do not consider that the Council failed to properly evaluate the proposal or failed to apply relevant case law, planning policy and definitions, and has not been inconsistent in terms of the determination of similar cases.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

Mr A Spencer-Peet

INSPECTOR