



Costs Decision

Site visit made on 3 May 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2023

Costs application in relation to Appeal Ref: APP/R3325/W/22/3310590 Buildings 1 & 2, 2 Wood Road, Ashill, Ilminster, Somerset TA19 9NP

- 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 Philip Underhill for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for the conversion of barn to 3no dwellings (smaller dwelling houses) together with parking and garden areas.
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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 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. The applicant states that the appeal was unnecessary as the proposed development is permitted development, accords with the development plan and that the Council made an incorrect assessment of facts, not a judgement, by comparing the appeal scheme to the *Hibbitt* Judgement¹.
4. In the Officer Report, the Council have set out an assessment of the proposed development against the relevant criterion and conditions of Class Q. An explanation is also included outlining how the Council reached its planning judgement regarding the scope of the proposed works based on the information submitted with the application. As set out in my decision letter, I acknowledge the differences between the appeal scheme and the agricultural building in the *Hibbitt* Judgement. However, as this judgement established key principles concerning the scale of building operations permitted under Class Q, it is relevant to the appeal. Furthermore, whether the proposed works go beyond the scope of a conversion is a matter of planning judgement with reference to the circumstances of each case.
5. Notwithstanding the above, the Design Supporting Statement submitted with the appeal application clearly states that all existing external walls (steel cladding and blockwork) will remain (apart from a small area of cladding/blockwork on the north elevation). Therefore, in stating that the scheme would involve the replacement of the existing profiled sheet metal cladding to the walls and the roof covering, amounting to a substantial amount

¹ *Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin).

of new material, the Council did not accurately assess the scheme. As such, this constitutes unreasonable behaviour.

6. However, as will be seen from the outcome of the appeal decision, I have found that there are shortcomings of the appeal scheme and its associated evidence beyond these inaccurate assertions, which suggests that an appeal could not have been reasonably avoided even if the Council's unreasonable behaviour had not occurred. Furthermore, the applicant has quickly and easily rebutted the Council's mistaken position and has not involved any extra assessment. Therefore, when pursuing the appeal, the applicant has not suffered wasted expense to an extent that would justify an award of costs.
7. Turning to the lack of comments from the Council on the recently approved applications referenced by the applicant. Such an approach does not constitute unreasonable behaviour given that the Council have sought to rely upon substantiating their position based on the Officer Report. Furthermore, the Council are under no obligation to provide a Statement of Case in addition to the Officer Report as part of the appeal.
8. I have concluded that the proposed development would not be development permitted under Class Q of the GPDO and therefore there was no need for me to consider whether prior approval would be required. In that regard, it was reasonable and useful that the Council decision set out its position with reasoning for why a prior approval would be refused under Q.2 (1) (f) of Schedule 2, Part 3, Class Q, Part 3 of the GPDO to cover the possibility of a different outcome on the first reason for refusal. As such, I do not need to consider the applicant's claims in respect of the second reason for refusal on the decision notice as it would not alter the outcome of this costs decision.
9. Therefore, I conclude that the unreasonable behaviour identified above did not result in unnecessary or wasted expense and that an award of costs is not warranted.

Juliet Rogers BA (Hons) MA MRPI

INSPECTOR