The Planning Inspectorate

Costs Decision

Site visit made on 23 May 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Costs application in relation to Appeal Ref: APP/W1525/W/22/3303856
Building at Rolphs Farm, Basford Hill, Little Waltham, Chelmsford CM3 3PA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Phil Cunningham for a full award of costs against Chelmsford City Council.
- The appeal was against the refusal of the Council to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of agricultural building to a dwellinghouse.

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 (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. In determining the appeal, I have found that the development proposed would not constitute development permitted under Schedule 2, Part 3, Class Q of the GPDO. It therefore follows that the Council did not prevent or delay development that should clearly be permitted. Equally, there is no evidence before me that indicates that the scheme has previously been considered by the Secretary of State or an Inspector, nor, given the limitations of the prior approval process, could the concerns of the Council be addressed by means of planning condition. Accordingly, the Council did not act unreasonably in these respects.

4. The Council cited two reasons for refusal with regard to whether the development proposed amounted to permitted development. These referred to conflict with limitations in relation to both Paragraph Q.1(h) and Q.1(i) of Schedule 2, Part 3 of the GPDO.

5. In relation to Paragraph Q.1(h), the Council considered that the proposed development would exceed the dimensions of the existing building, contrary to this limitation. The provided officer's report adequately sets out the reasoning as to why the Council refused to grant prior approval on this basis.

6. However, following the submission of the appeal, the Council indicated that it would not be seeking to defend this reason for refusal. This, in itself, is not unreasonable and was communicated at the earliest opportunity following receipt of the applicant's grounds of appeal. It therefore follows that the expense incurred by the applicant in preparing this evidence was not unnecessary.

7. With regard to Paragraph Q.1(i), the Council provided evidence to support its position. The Council considered the application with regard to the information included within the submission, which included a structural report. The Council clearly had regard to this report, which itself acknowledges is only based on visual inspection and does not purport to be a structural survey. The provided plans include only limited information with regards to how a new roof structure would be achieved and indicate that some of the internal metal framework currently supporting the roof of the building would be removed. No further supporting information was provided by the applicant with regard to this and it wasn't referred to in the structural report.

8. In this context it would not be reasonable to expect the Council to commission or carry out its own survey of the building, or carry out structural calculations. In the absence of substantive evidence to the contrary, the Council was entitled to raise concerns with regard to the condition of the building, and thus its ability to support the proposal without requiring building work beyond what could be defined as conversion, on the basis of the provided information and its own visual inspection. I consider that this particular reason for refusal was adequately substantiated by the Council.

9. The Council also clearly had regard *to Hibbit and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin) within its evidence. This case law is well-established with regard to the general principles of building operations relating to conversion. Although the precise circumstance of the appeal scheme may have differed to some extent from those within the Hibbitt judgement, the Council applied the principles within the judgement proportionally within its evidence. It did not act contrary to or fail to follow well-established case law.

10. It is the case that the Council has previously granted prior approval[1] for the change of use of the agricultural building to a dwellinghouse. In doing so, it logically follows that it considered that the building was capable of conversion at those points.

11. However, it is possible that one proposed scheme to convert a building could be permitted development, whilst another could not be. Whilst the schemes may be similar, each should be considered on its merits as a matter of fact and degree, on the basis of the precise works proposed or likely to be required in each case.

12. On the basis of the evidence before me, the scheme granted prior approval in 2015 was not identical to that which is subject to this appeal, and I have not been provided with full details of the 2018 approval. There is no other evidence that would indicate that the Council acted unreasonably in taking the approach that it did in refusing to grant prior approval, despite previous approvals for similar schemes.

13. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

C Harding

INSPECTOR

[1] 15/00821/COUPA & 18/01754/CUPAQ