



Costs Decision

Site visit made on 31 May 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Costs application in relation to Appeal Ref: APP/D2510/W/23/3314055 Large barn to the north west of Farr Farm, Farr Farm, Habertoft Lane, Habertoft LN13 9NU

- 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 Nigel Hancock for a full award of costs against East Lindsey District Council.
- The appeal was against the refusal of prior approval under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the building is located on the north west side of Farr Farm, Habertoft. Natural light will be provided through the reuse of existing openings where possible and the insertion of new windows into the external envelope. Existing external concrete cladding walls and metal barrier walls to be retained where possible. Existing open boarded vertical timber cladding retained and additional cladding boards added overlapping to fully enclose the envelope. Existing corrugated metal roofing retained where possible. Transparent corrugated plastic roofing added where shown on elevations. Proposed new timber framed windows and doors installed. Proposed new masonry walls. Relevant services installed. New uPVC rainwater goods.

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. The application for costs has been brought on substantive grounds. The PPG provides examples¹ of the types of behaviour that give rise to such an award of costs. These include failing 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; refusing planning permission on a planning ground capable of being dealt with by condition; and refusing to provide reasonably requested information. A number of grounds for the application have been made which I will consider in turn.
4. The applicant considers that unnecessary costs have been incurred in having to provide additional information in response to errors made by the Council in its report and decision notice. These errors are clearly unfortunate and do not

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

engender confidence in the planning system. However, with regard to the officer report, they are clearly errors and did not contribute to the substance of the reasons for refusal.

5. The first and final sentences of reason 2 on the decision notice clearly identify the relevant section of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) with which the proposal did not comply. While the intervening explanation is clearly incorrect as it does not refer to the relevant site or plans, the principle on which the reason for refusal was founded is clear. The Council did also clarify this point in its appeal statement. I therefore consider that these errors, while somewhat confusing and undoubtedly frustrating for the applicant, would not constitute unreasonable behaviour.
6. Reason 3 on the decision notice was on the basis that it would be otherwise impractical or undesirable for the use of building to change to Class C3 due to the presence of surrounding livestock buildings. The applicant contends that this is a matter which could have been dealt with through the use of an appropriate condition and provided evidence to this effect. Schedule 2, Part 3, Paragraph W.(13) of the GPDO does allow the local planning authority to grant prior approval subject to conditions reasonably related to the subject matter of the prior approval. Any such condition would also have to comply with the tests set out in paragraph 56 of the National Planning Policy Framework. The Council's report demonstrated a reasonable exercise of planning judgement to reach the conclusion it did.
7. The PPG provides specific advice in relation to the works permitted under the Class Q permitted development right². This confirms that it is only where the existing building is already suitable for conversion to residential use does the permitted development right apply. It then goes on to advise that the Hibbit case³ provides a discussion of the difference between conversions and rebuilding. It is therefore directly relevant to the substance of the appeal, irrespective of the subsequent changes to the GPDO. This is also a matter for the exercise of planning judgement and the Council's report clearly demonstrates how it arrived at its conclusion.
8. The applicant also seeks costs on the basis that the Council behaved unreasonably by not disclosing the emails between the case officer and the building control officer.
9. Schedule 2, Part 3, Paragraph W.(9)(c) of the GPDO does allow the local planning authority to require the developer to submit such information as the authority may reasonably require in order to determine the application including details of proposed building or other operations. The Council's email of 20 April 2022 requested such information and clearly set out that it considered the proposed works would go beyond those reasonably necessary to convert the building. The applicant was therefore aware that the Council were not satisfied that the application complied with the requirements of the GPDO and that further information was necessary to demonstrate their case.

² When is permission required Paragraph: 105 Reference ID: 13-105-20180615 Revision date: 15 06 2018

³ Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

10. Building control are not a statutory consultee in the prior approval process. If they were, the Council would be obliged to make those comments available. However, in this case, the planning officer was seeking informal advice from a colleague and expressing their views as to the likely next steps and outcome of the appeal. This is not an unreasonable action in and of itself, although it may be that this should have been expressed using more appropriate or temperate language.
11. The comments in relation to the challenges of ensuring that developments approved using Part Q comply with the building regulations were made by the building control officer. This was their opinion in relation to their area of expertise. It does not display any bias on the part of the planning officer.
12. I do not know full details of what information was requested by the Council following the discussions referred to in the email of 25 April 2023, or if there was any further discussion between the parties following the applicant's email of 17 June 2023 and the building control email of 15 July 2022 and the eventual issuing of the decision notice. However, it would not necessarily be the case that the planning officer would rely on the entirety of the comments from building control, which do acknowledge that they are not the final decision maker with respect to decisions about compliance with the GPDO. The Council's officer report sets out intelligible reasons for the decision they reached which demonstrate a reasonable exercise of planning judgement. There is no evidence in this which would suggest that the Council is biased against Part Q applications, or that the Council has not taken the further information provided into account. I therefore consider that it has not been demonstrated that the Council has behaved unreasonably in this regard.

Conclusion

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

J Downs

INSPECTOR