



Costs Decision

Site visit made on 18 July 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3319335 Breaches Barn, Barrow Street, Mere, Wiltshire BA12 6AB

- 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 Mrs S Fineman for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal to grant prior approval required under a Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
-

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 appellant's claim, in short, is that the Council failed to specify exactly how the proposal failed to accord with the relevant provisions of the GPDO, namely whether the works amounted to permitted development under Schedule 2, Part 3, Class Q, and that its description of the building as 'skeletal' was inaccurate. The appellant further states that the Council did not treat the application on its merits but relied on decisions made on other proposals to support its refusal. Finally, the appellant states that the Council failed to respond to enquiries for clarification made to it after the decision, thus not acting in a positive and proactive manner as advocated by the National Planning Policy Framework.
4. The Council responds that it corresponded with the appellant's agents prior to the decision being made, that the application followed two earlier applications, one refused and one withdrawn, but that no pre-planning advice was sought outside of these applications where the Council could have advised on a suitable approach to take with the proposal. The Council adds that the prior notification process under the GPDO differs from a normal planning application in terms of the scope for negotiation during the application period.
5. As set out in my main decision, the courts have held that the question of whether the extent of works proposed under Class Q amounts to a conversion or a re-build is ultimately a matter of planning judgement for the decision maker. The Council set out its concerns to the appellant's representatives in emails dated 26 July 2021 in respect of an earlier application, and 23

September 2022¹ and 6 October 2022 in respect of the current proposal. The evidence included replies from the appellant's agents on 23 and 26 September and 5 October 2022.

6. The Council's responses on both occasions refer to the totality of works going beyond what is reasonably necessary to convert the building to residential use. The planning officer was clear in the email of 6 October 2022 that this was in reference to the list of works provided by the appellant's architect in the 23 September 2022 email. On the basis of the evidence before me, the Council did engage with the appellant's representatives and sought to explain its position prior to the determination of the proposal. It set out where its concerns lay, with reference to the skeletal nature of the barn. The Council made clear it was not any one element of the proposal that was unacceptable, but the cumulative extent of works. That is a planning judgement which the Council was entitled to make. I have ultimately agreed with the Council in my decision and therefore its stance was not unreasonable, nor was its refusal indicative of a failure to act in a positive and proactive matter, in light of the advice previously given to the appellant. That the appellant was dissatisfied with the level of detail provided by the Council is not grounds for an award of costs. Any further dissatisfaction the appellant may have with the Council's handling of the application is a matter for local government accountability.
7. The Council cited other appeal decisions in support of its position. There is nothing inherently wrong with this approach. Indeed, it is fundamental in planning to have regard to material considerations and a potential reason for an award of costs where similar cases are not determined in a consistent manner. I have no firm evidence to indicate that the Council, whilst having in mind the approach taken in other appeal decisions for similar forms of development, simply refused the proposal out of hand and did not consider the application on its specific merits. Rather, the evidence sets out that the planning officer sought more specific information from the appellant's representative on the extent of works proposed to inform his judgement prior to making a decision. I find no unreasonable behaviour in this respect.

Conclusion

8. For the reasons set out, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. No award of costs is therefore made.

K Savage

INSPECTOR

¹ Referenced but not provided