



Costs Decisions

Site visit made on 16 August 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Costs application in relation to Appeal A: Ref. APP/Z1510/W/22/3307373 Land North West Of Whitehouse Farm, Finkle Green, Birdbrook CO9 4BT

- 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 Braintree District Council for a full award of costs against Mr Hodge of Your Pad Developments Ltd.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for the conversion of agricultural buildings into C3 residential dwellings.
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Costs application in relation to Appeal B: Ref. APP/Z1510/W/23/3315451 Land North West Of Whitehouse Farm, Finkle Green, Birdbrook CO9 4BT

- 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 Braintree District Council for a full award of costs against Mr Hodge.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for the conversion of agricultural buildings into C3 residential dwellings.
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Decisions

1. The application of an award of costs in relation to Appeal A and Appeal B is allowed in part.

Procedural Matter

2. The application is made in relation to both appeals in the banner heading above, in a joint application. While I have considered each application on its own merits, due to the similarities of the grounds and issues for consideration, I have considered the applications together, except where otherwise indicated.

Reasons

3. Paragraph 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that costs may only 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. The Council's grounds refer to providing information that is shown to be manifestly inaccurate or untrue, at paragraph 16-052-20140306 of the PPG. Its contention is that given

the structural report¹ submitted with the appealed applications referred to an area of potentially undermined footing, if it has been undermined, then the revision B report² submitted with the subsequent application for the same buildings, is either inaccurate or untrue for omitting it.

4. It was not unreasonable for the appellant to draw to my attention to the determination of a recent application for a similar proposal on the same site, and request to submit evidence of relevance. However, the late revised report (revision B) omitted/changed references to a crack indicating potentially undermined footing, without any further explanation as to why it was omitted.
5. It was only when I raised this matter that the appellant provided some explanation for it. However, this was somewhat limited, and for the reasons set out in my decision letter, I disagree that the omission was not relevant to a Class Q conversion. The appellant has not adequately substantiated why the potential undermining of a footing is not of relevance to these appeals. The engineer's overall opinion that the building could be converted does not adequately mitigate or outweigh the nature of this particular concern.
6. Given the main matters under consideration in these appeals, providing a late revised report amending an important element, without adequate further explanation is unreasonable. In-light of the changes between the reports, and the reasoning given for it, I can only conclude that the appellant has submitted manifestly inaccurate evidence, which is unreasonable behaviour. The Council will have incurred unnecessary or wasted expense in addressing the matter.
7. I am not convinced that this amounts to the concealment of evidence. The differences in the reports do not invalidate the rest of the appellant's evidence, which includes some clarifications and further evidence upon certain matters, that are a matter of considered judgement. Therefore, full costs awards are not justified. However, a partial award of costs is appropriate for the costs incurred by the Council in preparing and submitting evidence in respect of the differences between the two versions of the structural reports.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Hodge and Mr Hodge of Your Pad Developments Lts, shall pay to Braintree District Council, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred by the Council from preparing and submitting evidence in respect of the differences between the two structural reports referenced above and set out in the footnotes to this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the appellants, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Dan Szymanski

INSPECTOR

¹ By Howe Structural Consultants Limited, dated 06/12/2021 (Job No 211014).

² By Howe Structural Consultants Limited, dated 06/12/2021 (Job No 211014) Rev. B.