



Costs Decision

Site visit made on 31 October 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Costs application in relation to Appeal Ref: APP/W3330/W/23/3315615 Brickyard Farm, Bull Street, Creech St Michael, Taunton TA3 5PW

- 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 J Peilow for a full award of costs against Somerset West and Taunton Council.
- The appeal was against a 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) (GPDO) for prior approval for proposed change of use from agricultural building to 1 No. dwelling house (Class C3) and associated building operations.

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.

Procedural ground: information & deadlines

3. Although the Council has conceded that its decision on the prior approval application was delayed by one day, an extension of time was agreed between the main parties, and the Council did adhere to this new deadline. Moreover, although I recognise that the applicant experienced difficulties in obtaining updates from the Council on the progress of their application, as explained in the Costs Decision in relation to appeal decision Ref APP/W3330/X/21/3278008, there is no obligation for the Council to respond within the 56 day period.
4. I therefore find that the Council did not delay in providing information, nor did the Council fail to adhere to deadlines, in the terms of the advice given in the PPG¹. The Council's behaviour was not unreasonable in relation to this ground.

Substantive ground: explanations

5. As explained above, the Council determined the prior approval application within the time limit agreed between the main parties. Therefore, an explanation in the terms of the advice given in the PPG² was not required. The Council's behaviour was not unreasonable in relation to this ground.

¹ Paragraph 16-047-20140306

² Paragraph 16-048-20140306

Substantive ground: preventing or delaying development

6. As explained in detail in the associated appeal decision, although I found, in contrast to the Council, that the building which is the subject of the associated appeal decision (the Class Q building) is not contrary to Article 3(5) of the GPDO, I agree with the Council that the proposed development would not comply with the requirements of paragraph Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO, and that prior approval cannot be given for the proposed development.
7. It is clear, then, that the Council did not prevent or delay development which should clearly be permitted, in the terms of the advice given in the PPG³. The Council's behaviour was not unreasonable in relation to this ground.

Substantive ground: refusal reason 1

8. As explained in detail in the associated appeal decision, I found, in contrast to the Council, that the Class Q building is not contrary to Article 3(5) of the GPDO. Nevertheless, awards of costs do not inevitably follow even if appeals are allowed. In this case, a detailed assessment of matters of fact and degree, and an interpretation of the GPDO, has been required. In this regard, the Council took account of the relevant facts and whilst I disagreed with their findings, these were nevertheless within the range of reasonable possibilities open to them.
9. I therefore find that the Council did not fail to produce evidence to substantiate the first reason for refusal on appeal, in the terms of the advice given in the PPG⁴. The Council's behaviour was not unreasonable in relation to this ground.

Substantive ground: refusal reason 2

10. When making an application for prior approval under Class Q of Part 3 of Schedule 2 of the GPDO, it is the responsibility of the applicant to demonstrate that all of the limitations and conditions have been fulfilled. Hence, given the close proximity of the existing agricultural building to the appeal site, it is the responsibility of the applicant to identify and quantify the potential impacts of the proposed development on the living conditions of the future occupiers of the proposed dwelling in the terms of paragraph Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO, in order to demonstrate that the siting of the building does not make it undesirable for the building to change use, with particular regard to noise and disturbance.
11. As explained in detail in the associated appeal decision, after considering the applicant's arguments in relation to the fact that the GPDO allows residential and agricultural uses under one roof and that the use of the adjacent existing agricultural building is already controlled by a planning condition restricting its usage to dry storage, I agreed with the Council that the proposed development would not comply with the requirements of paragraph Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO, and that prior approval cannot be given for the proposed development.

³ Paragraph 16-049-20140306

⁴ Paragraph 16-049-20140306

12. I therefore find that the Council did not fail to produce evidence to substantiate the second reason for refusal on appeal, in the terms of the advice given in the PPG⁵. The Council's behaviour was not unreasonable in relation to this ground.

Substantive ground: proposal's impact

13. As explained above, it is the responsibility of the applicant to demonstrate that all of the limitations and conditions related to Class Q of Part 3 of Schedule 2 of the GPDO have been fulfilled. As explained in detail in the associated appeal decision, after considering the applicant's arguments (including that the use of the adjacent existing agricultural building is already controlled by a planning condition restricting its usage to dry storage), I agreed with the Council that the proposed development would not comply with the requirements of paragraph Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO, and that prior approval cannot be given for the proposed development.
14. I therefore find that the Council did not make vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis, in the terms of the advice given in the PPG⁶. The Council's behaviour was not unreasonable in relation to this ground.

Substantive ground: conditions

15. As explained in detail in the associated appeal decision, after considering the applicant's arguments in relation to the fact that the GPDO allows residential and agricultural uses under one roof and that the use of the adjacent existing agricultural building is already controlled by a planning condition restricting its usage to dry storage, and noting that the decision relating to Local Planning Authority decision Ref 14/20/0007/CQ is not directly comparable with the appeal proposal, I agreed with the Council that the proposed development would not comply with the requirements of paragraph Q.2(1)(e) of Class Q of Part 3 of Schedule 2 of the GPDO, and that prior approval cannot be given for the proposed development.
16. As explained in detail in the associated appeal decision, the proposed condition relating to hours of operation would not fall within the ambit of paragraph W.(13) of Part 3 of Schedule 2 of the GPDO, nor would it be related to the development permitted by Article 3(1) of the GPDO. The proposed condition would also not be reasonably related to the development permitted.
17. The Council suggested that the existing agricultural building could be demolished. Whether or not that is an appropriate course of action considering all of the circumstances is not before me to decide. I do however consider that, by making this suggestion, the Council were merely attempting to conclusively resolve this aspect of the dispute.
18. I therefore find that the Council did not refuse prior approval on a ground capable of being dealt with by conditions, where suitable conditions would enable the proposed development to go ahead, in the terms of the advice given in the PPG⁷. The Council's behaviour was not unreasonable in relation to this ground.

⁵ Paragraph 16-049-20140306

⁶ Paragraph 16-049-20140306

⁷ Paragraph 16-049-20140306

Substantive ground: consistency

19. As explained in detail in the associated appeal decision, the decision relating to the dwelling permitted by Local Planning Authority decision Ref 14/20/0007/CQ is not directly comparable with the appeal proposal. In particular, the dwelling permitted by that decision is detached from its nearest agricultural building and that building is less substantial in size when compared with the existing agricultural building which is located adjacent to the Class Q building, meaning that this decision is not directly comparable with the appeal proposal.
20. I therefore find that the Council did not fail to determine similar cases in a consistent manner, in the terms of the advice given in the PPG⁸. The Council's behaviour was not unreasonable in relation to this ground.

Conclusion

21. As I have found above that the Council's behaviour was not unreasonable in relation to all of the grounds raised, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

Alexander O'Doherty

INSPECTOR

⁸ Paragraph 16-049-20140306