



Costs Decision

Site visit made on 1 November 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Costs application in relation to Appeal Ref: APP/L3245/X/22/3310284 Barn south of Hilltop Farm, Hampton Wood, Ellesmere SY12 0NN

- 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 Richard Mayer for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the conversion and change of use of existing agricultural building to residential use under Class Q of the GPDO.
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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) advises¹ 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 PPG explains² that local planning authorities (LPA) are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include failure to produce evidence to substantiate each reason for refusal and acting contrary to, or not following, well-established case law.
4. In refusing the application, the applicant considers that the Council applied markedly different thresholds than it had in other similar applications made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). The applicant refers to several applications which are considered to support this view.
5. However, it is possible that a proposal to convert one building could be permitted development, whilst another could not be. Whilst there may be similarities between some of the schemes, the examples provided concern agricultural buildings of various sizes, condition, and construction, with the Council granting approval in some cases with others being allowed on appeal. Each case 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.

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

6. The applicant also contends that the Council's reason for refusal was based on works that did not form part of the application, and that these works would go beyond the scope of those permitted under the GPDO. The Council's decision notice cited two reasons for refusal. These were that further works would be needed in excess of those reasonably necessary to facilitate the conversion, and therefore the building itself was not suitable for conversion.
7. The Council clearly had regard to *Hibbitt*³ given that it was expressly referred to in its decision notice. 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 differed from those within the Hibbitt judgement, the Council sought to apply the principles from the judgement within its evidence. The Council's starting point subsequently was that the building was not considered suitable for conversion and therefore, in its view, further works would be required that would go beyond those permitted under the GPDO.
8. Although, as set out in my appeal decision, I do not agree with the Council's position regarding the suitability of the building for conversion, this does not mean that the Council acted unreasonably. The Council sought to follow established case law, and whether the building was suitable for conversion was a matter of judgement, and I do not find that the Council acted unreasonably in this regard.
9. Finally, the applicant considers that the Council openly questioned and disregarded the findings contained within the structural report submitted in support of the application without presenting any evidence to the contrary.
10. 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. Therefore, although not a statutory consultee, advice was sought from the Council's Building Control team. Particularly given the findings in the previous appeal⁴, I do not find it unreasonable that such advice was sought in relation to the building's suitability for conversion. Furthermore, I do not agree that the Council completely disregarded the professional findings of the report, but instead sought to question aspects of it.
11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR

³ Hibbitt & Another v SSCLG and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

⁴ APP/L3245/X/20/3256290