



Costs Decision

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3324914 Greenacres Farm, Rockbourne Road, Coombe Bissett SP5 4LP

- 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 Salarian Homes Ltd for an award of costs against the decision of Wiltshire Council.
 - The appeal was made against the refusal of application, Ref PL/2023/00746, which sought planning permission for the conversion of the existing outbuilding to residential with parking and amenity area.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (guidance) advises that, irrespective of the outcome of the appeal, 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. Unreasonable behaviour may be either procedural or substantive.
 3. The Appellant argues that there has indeed been unreasonable behaviour by the Council. The Appellant draws upon an adjoining site's appeal decision (ref APP/Y3940/W/21/3284461) and the previous refusal (ref 21/00845/FUL) of the currently appealed scheme. In essence the concern is that the previous reasons for refusal had been overcome but yet the proposal was still refused by the Council. This time it was purely in relation to freshly raised concerns over the structural condition of the building; a factor never previously raised by the Council as a barrier. This is considered by the Appellants to be wholly unreasonable behaviour, they feel that the Council were disgruntled in having to concede on their previous assessment due to the adjacent appeal decision, and as such thought up an entirely new reason for refusal without any justification.
 4. The Appellant points out that the condition of the building has not changed since the original submission in 2021, and it argues that it has been confirmed by two independent surveyors that the building is capable of conversion. The Appellant underlines that they provided a May 2023 survey at great expense seeking to satisfy the Council. This was despite raising multiple times the fact that the structural condition of the building never formed part of the reason for refusal previously with officers having seemingly given this aspect a clear bill of health. The Appellant had underlined to the Council that it was behaving unreasonably. The Appellant also makes the point that there has been no
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change in local or national planning policy and that the accompanying officer report does not justify this U-turn in the Council's assessment.

5. The Council argues that it was reasonable to amend its approach to a degree in the light of the Inspector's decision and that in any event throughout the course of the application it sought to gain further information in the form an additional structural survey along with a schedule of works required to convert the building to assess accordance with criterion (i) of Core Policy CP48. The Council says that the request was based on the lack of justification provided within the submission of this application. From reviewing this additional structural survey and schedule of works required to convert the building, officers considered the convertibility of this building to be non-compliant with the requirements of Core Policy CP48. The Council argues that it was consistent with the refusal reasons of planning application 21/00845/FUL wherein the 'lack of justification' factor was raised.
6. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs.
7. I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost.
8. The Appellant is quite correct that there has been no change in local or national policy and that in those circumstances one would generally expect an apparently consistent approach to decision making by a Council on a repeat application. The appeal decision on the adjoining site had seemingly removed the landscape concerns, in the eyes of the Council and the Appellant, and the Appellant read that as all that was holding the scheme back from approval. One could argue whether the passing comment in the 21/00845/FUL refusal about 'lack of justification' did or could refer to structural suitability and also whether the passing comment in the then officer report about 'the majority of the structure the existing building being retained' is full clearance a new use structurally. To my mind that part of the planning history is not clear cut.
9. However, what is certain is that by the time of determination of the currently appealed scheme the Council had received, voluntarily from the Appellant, fresh information – a more extensive 'Structural Survey Report & Schedule of Works' document than the 'Report Upon Visual Inspection' already in its possession. The Council considered this new information. I find it entirely reasonable, based on that report's content and analysis, that the Council could conclude that the relevant policy requirement to require conversions to not need major rebuilding would be breached.
10. In my opinion the Council followed up this thinking by a soundly written reason for refusal within the Decision Notice with applicable policy correctly cited. It was explained that in the Council's eyes conversion would require significant new build/modification and that this, amongst other matters, negated a suitable conversion under Core Policy 48. The Council indicated not unreasonably that it considered that the resultant building would be tantamount to the creation of a new, unjustified, dwelling in the open countryside of the AONB.

11. I should add that I appreciate the May 2023 structural report would have been expensive for the Appellant. However, it was provided pre any appeal stage as result of mutual dialogue with the Council, and the costs of that report would not be a matter for me in this decision.
12. Looking at the bigger picture, and in summary, in my opinion the Council's wording and assertions in the round are not unsubstantiated, proper practice and procedure have been followed, and its actions throughout the planning assessment process were not irrational.
13. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR