

Costs Decision

Site visit made on 21 February 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Costs application in relation to Appeal Ref: APP/V2635/W/23/3325640 72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB

- 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 Nigel Marsh for a full award of costs against King's Lynn and West Norfolk Borough Council.
- The appeal was against the refusal of the Council to grant prior approval for change of use of agricultural building to a small hotel (C1) (Schedule 2, Part 3, Class R).

Decision

1. The application for an award of costs is allowed in the terms set out below.

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 applicant's claim is that the Council failed to determine the application within the statutory 56-day time period and the application should have been deemed to be granted. The applicant adds that the proposal otherwise accords with Schedule 2, Part 3, Class R1(a), having been used solely for an agricultural use as part of an established agricultural unit on 3rd July 2012, and that the Council has misinterpreted the legislation in formulating its reason for refusal.
4. The Council responds that the 56-day time limit does not apply where the development applied for is not permitted development, and that its reason for refusal was substantiated in its Statement of Case.
5. As set out in my main decision, the Council was not at liberty to determine when the 56-day period commenced, as the GPDO and relevant case law are clear that this period commences on receipt of the required information. Moreover, I am not referred to any guidance or case law which sets out that the 56-day determination period does not apply or can be suspended where the local planning authority believes the proposal does not amount to permitted development in principle. Rather, the Council acted contrary to well-established case law in *Murrell*¹ which makes clear that it is not entitled to 'stop the clock' on a validly made application. This amounts to unreasonable behaviour.
6. The Council could have set out its objections, including concerns over whether the proposal was development of the type permitted under Class R, in a refusal

¹ *Murrell v SSCLG* [2010] EWCA Civ 1367

notice issued within the 56-day period. Its failure to do so meant that, once I determined that the Council's refusal notice had not been issued in time, it was not open to me to consider the substantive arguments advanced in this and other respects.

7. On the evidence before me, the applicant had little choice but to make an appeal to clarify if prior approval was deemed to be granted or, if not, to attempt to secure prior approval. The alternative of seeking a lawful development certificate to clarify the situation was unlikely to have resulted in a positive outcome given the Council's sustained opposition to the proposal.
8. Consequently, I find that the applicant has borne the unnecessary cost of an appeal that should have been avoided by the Council's acceptance that the determination period for the prior approval application had elapsed. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has therefore been demonstrated and an award of costs is justified.

Costs Order

9. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Nigel Marsh, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to King's Lynn and West Norfolk Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Savage

INSPECTOR