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## Costs Decision

Site visit made on 1 July 2024

**by A Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 August 2024**

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### **Costs application in relation to Appeal A Ref: APP/R0660/X/23/3327844 Agricultural building at land east of, Hall Green Lane, Somerford Booths**

- 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 Bell Estates Partnership for a full award of costs against Cheshire East Council.
  - The appeal was against the refusal of a certificate of lawful use or development for the change of use of agricultural building and land within its curtilage to 2 dwellings and building operations.
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### **Costs application in relation to Appeal B Ref: APP/R0660/W/23/3327846 Land East of Hall Green Lane, Somerford Booths**

- 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 Bell Estates Partnership for a full award of costs against Cheshire East Council.
  - The appeal was against the refusal of prior approval for the change of use of an agricultural building to single dwellinghouse.
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## **Decision**

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

## **Preliminary Matter**

2. In their rebuttal, the Council state that Appeal B is not the subject of a costs claim. However, the applicant's 'Application for an award of appeal costs' form clearly refers to both Appeal A and Appeal B. Accordingly, I have determined the application on the basis that costs are sought for both appeals.

## **Reasons**

3. 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.
4. The PPG provides examples of unreasonable behaviour by local planning authorities including vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and not determining similar cases in a consistent manner. The application for costs broadly relates to these matters listed as examples.
5. The Council's objection to the proposed developments is generally on the basis of the nature of the building itself and its suitability for conversion. However, it fails to give any explanation as to what it is about its nature that makes it unsuitable for conversion. The building is in a very good condition, supported

by the structural report and its addendum, which confirms its suitability for conversion. The Council offers no objective analysis or evidence to contradict the findings of the report.

6. The Officer's reports for both applications reference the PPG, stating '*The right permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations.*' The PPG clearly acknowledges that such works can include new windows, roofs and exterior walls, which may affect the external appearance of the building and would otherwise require planning permission.
7. The particular concern of the Council relates to the insertion of the large windows, cladding and a new roof, which they deem to '*go above and beyond what can reasonably and sensibly be considered to be a "conversion"*'. I note that neither of the two proposals propose the cladding of the exterior walls; the existing walls would be painted. Whether a development is a conversion is a matter of judgement. However, this judgement must be based on an objective analysis of the evidence available. The Council offer no objective analysis as to why it would not be a conversion, and by inference would be a fresh build.
8. In their correspondence with the appellant, dated 24 February 2023, the Council state '*Barn conversions under Class Q should generally be undertaken on substantial buildings such as brickwork structures which are capable of being converted to dwellinghouses with minimal operational development*'. However, the GPDO makes no reference to Class Q requiring the building to be 'substantial' nor that the operational development required to convert it into a building must be 'minimal'. It also makes no reference to the requirement of the agricultural building to be of any particular style. I have not been presented with any case law, including *Hibbitt*<sup>1</sup>, that suggests otherwise. Whilst I acknowledge that this is only the officer's opinion and is not binding upon the Council, it is nevertheless indicative of the Council's misunderstanding of Class Q and the extent of the development it permits.
9. It is an established principle that proposals should be considered on their own merits. However, there is also a reasonable expectation for consistency within the development management process. The appellant refers me to a building that the Council allowed the conversion of under Class Q of the GPDO<sup>2</sup>. I acknowledge that each case is determined on its own merits and there was a different structural survey. However, the photographs of the building provided by the appellant show the building to be very similar in design and construction to the appeal building. Based on the photographs and the structural reports, there was sufficient similarity between the buildings for the Council to need to explain any difference in approach. The failure of the Council to provide adequate reasons for taking a decision contrary to 22/5037M amounts to unreasonable behaviour.

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<sup>1</sup> *Hibbitt v SSCLG and Rushcliffe BC* [2016] EWHC 2853

<sup>2</sup> Council Ref 22/5037M

10. The Council suggest the applicant submitted three appeals for the same site 'purely for point scoring reasons'. This is a wholly unreasonable and unwarranted remark to make by the Council, not only because the three appeal developments are all different, but the applicant has every right to exercise their right to appeal the Council's decisions. Indeed, the fact that all three appeals have now been allowed validates their decision to do so.
11. The lack of an application for an award of costs being made in relation to a previous appeal, whether by the appellant or the Inspector, does not mean unreasonable behaviour did not occur. It simply means no argument was made that it had.
12. Overall, the failure of the Council to make an objective analysis of the evidence before them and their lack of consistent decision-making amounts to unreasonable behaviour. In such circumstances, it is evident the appeals in this case could have been avoided if the Council's unreasonable behaviour had not taken place. The applicant, therefore, suffered wasted expense in pursuing the appeals and a full award of costs is justified.

### **Conclusion**

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

### **Costs Order**

14. 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 Cheshire East Council shall pay to Bell Estates Partnership, the costs of the appeal proceedings described in the heading of this; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Cheshire East 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.

*A Walker*

INSPECTOR