

Costs Decision

Site visit made on 17 September 2024

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2024

Costs application in relation to Appeal Ref: APP/C3430/W/24/3342417 The Granary, Lyne Hill Lane, Penkridge, Staffordshire ST19 5NT

- 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 Ms Helena Dolisznyj for a full award of costs against South Staffordshire District Council.
 - The appeal was against the refusal of Prior Approval under Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 as amended for making a material change of use of an agricultural building and land within its curtilage to a use falling within Class C3 (dwelling house); and (b) operations reasonably necessary to convert the building into domestic use.
-

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 submits that the Council, in making their decision were either inconsistent or not clear in their reasons for refusal of case reference 23/00756/AGGRES and that this was unreasonable behaviour that resulted in wasted expense through the applicant defending additional matters at appeal.
4. I understand from the submissions before me that the previous prior approval¹ was largely identical to the current appeal scheme. Most importantly, the design and appearance of the proposed scheme was the same as that before me now. That case was refused on the grounds of insufficient evidence having been submitted to demonstrate the building complied with the agricultural use requirement of Class Q of Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).
5. The current appeal scheme was submitted with the affidavit and no other changes. Other than a new case officer, I also understand that there were no changes to policy, legislation, or other relevant circumstances between the two cases. However, the appeal scheme was refused on two additional grounds that were not raised at the time of the above-mentioned application.
6. Although it is necessary that all decision-makers consider each case on their own merits, previous decisions can be a material consideration. In this case, I find that both the previous and current schemes are sufficiently closely related

¹ Council's reference: 22/01142/AGRRES

that significant regard should have been had to the previous scheme. It is not clear that the Council had suitable regard to it and no justification has been provided, either through the application or appeal stages, as to why a different decision was reached by the second case officer. The change in case officers is not sufficient on its own to justify why a different decision was made.

7. Although the Council did refuse both applications on the issue of last use, by adding two additional reasons for refusal without justification or any change in circumstances, they will have undermined the appellant's confidence in the decision-making process. In this way their decision was unreasonable and would have resulted in unnecessary expense on behalf of the appellant in defending against additional and unexpected reasons for refusal.
8. The Council have raised that the applicant did not open a dialogue with the Council between the refusal of 22/01142/AGRRES and the submission of the appeal application. Such discussions can be useful in overcoming issues, especially where the fine tuning of a scheme is necessary. In this case the Council may have been able to set out what information was required in any resubmission to overcome the concerns as to the last use and so such communication may have been helpful. The appellant would not, however, have expected new issues to have been raised at this time. I do not, therefore, find that it is the applicant's fault that they were not aware of these additional issues prior to the submission of the appeal case.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council not suitably justifying the inconsistency between cases and a partial award of costs is therefore warranted.

Costs Order

10. 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 South Staffordshire District Council shall pay to Ms Helena Dolisznyj, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the defence against the second and third reasons for refusal as set out on decision notice reference 23/00756/AGRRES; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to South Staffordshire District 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.

Samuel Watson

INSPECTOR