



Costs Decision

Site visit made on 25 November 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2025

Costs application in relation to Appeal Ref: APP/P1045/W/24/3342866 Stoneleigh Farm, Derby Lane, Cubley, Derbyshire DE6 2EY

- 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 Clive Vernon for a full award of costs against Derbyshire Dales District Council.
 - The application Ref is 24/00021/PDA.
 - The appeal was against the refusal to determine if prior approval is required for conversion of agricultural building to 3no. smaller dwellinghouses (use class C3) and associated building operations.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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 advises that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceedings, behaviour, and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The applicant is seeking a full award of costs on the basis of alleged unreasonable behaviour. The crux of the applicant's case concerns the reasons why prior approval was refused and thus whether an appeal could, or should, have been avoided.
5. The appellant considers that the reason for refusal relating to curtilage is invalid. The appellant clearly set out how the curtilage met the requirements set out in Paragraph X of the General Permitted Development Order (the GPDO) within documents submitted with their application.
6. The Council failed to interpret the submitted information correctly against the requirements of Paragraph X of the GPDO. The Council acknowledged this in their statement of case and conceded that this reason for refusal was no longer valid. However, this only came to light when the Council were determining another application at the appeal site and after the applicant had written their appeal statement of case. Had the error been recognised earlier, then the

applicant would not have needed to spend unnecessary time and expense in defending this reason for refusal. It has resulted in unnecessary and wasted expense in time and resource for the applicant. On this issue I find that unreasonable behaviour has been demonstrated by the Council.

7. Secondly, the appellant considers the Council failed to determine the application in accordance with paragraph Q.1 (i)(ii), misinterpreting the legislation resulting in an unjustified reason for refusal. As I have noted in the appeal decision letter, the Council have misquoted the GPDO in respect of the forementioned paragraph. The decision letter and officer report considered that the proposal would not consist of building operations or partial demolition to the extent that is reasonably necessary for the building to function as a dwellinghouse. However, in respect of demolition, the wording at paragraph Q.1 (i)(ii) is *'partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).'*
8. Notwithstanding this, irrespective of the demolition, from reading the officer report it is evident that the Council had concerns that the building operations went beyond what they considered to be reasonably necessary for the building to function as a dwellinghouse. Whilst I have come to a different conclusion on this, and while all the works may be allowed under Class Q, this does not automatically mean that they are reasonably necessary. Determining what is reasonably necessary is a matter of planning judgement. The disagreement on this issue could only have been resolved by way of an appeal. The applicant's costs in defending this aspect of the appeal was therefore a necessary part of the appeal process. As such unnecessary or wasted expense, as described in the PPG has not been demonstrated.
9. Thirdly, the appellant considers the Council failed to determine the application in accordance with Paragraph Q.2 (f). This requires the Council to consider whether the prior approval of the authority would be required in relation to the design or external appearance of the building. The Council concluded that the proposal would have a detrimental impact on the character and appearance of the existing building and area. This is substantiated in the officer report and statement of case, with the Council finding that the splitting of the building and large openings would not retain the agricultural character of the existing building. The Council clearly had regard to building one being converted to a dwellinghouse when appraising building 2 and found that the appearance of three bungalow style properties would be at odds with their surroundings. Building 1, whilst utilising similar materials would not be split and thus would not appear the same as building 2. I find that the Council did put forward sufficient reasons to refuse the application on the issue of design and external appearance which is largely a matter of planning judgement. There is no evidence of unreasonable behaviour being demonstrated by the Council to justify an award of costs on this issue.
10. Lastly, the applicant considers that the Council determined the application against local planning policies rather than national policy. While local planning policies were referenced in the Council's statement of case, they were not referenced or used in the officer report to determine the application for prior approval. The officer report clearly sets out their assessment of the application against the relevant criteria within Class Q of the GPDO. There is no evidence of unreasonable behaviour from the Council on this issue.

Conclusion

11. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been partially demonstrated and that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's reason for refusal in relation to curtilage, is justified.

Costs Order

12. 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 Derbyshire Dales District Council shall pay to Mr Clive Vernon, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing the appeal in relation to the curtilage information set out in Paragraph X of the GPDO; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Derbyshire Dales 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.

T Bennett

INSPECTOR