



Costs Decision

Site visit made on 16 May 2016

by Jennifer Tempest BA(Hons) MA PGDip PGCert Cert HE MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 July 2016

Costs application in relation to Appeal Ref: APP/R3325/W/16/3145488 Land behind Chequers, Smallway Lane, Galhampton, Yeovil, Somerset BA22 7AE

- 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 Mrs A Bees for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of the Council to grant prior approval required under Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the change of use of an agricultural building to a dwellinghouse (Use Class C3) and for associated operational development.
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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 (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. The costs application and the Council's response were submitted in writing.
 3. Paragraph 16-049-20140306 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Among the examples of unreasonable behaviour mentioned by the PPG in that context are (1) preventing or delaying development which should have been permitted having regard to National Policy (2) a failure to produce evidence to substantiate each reason for refusal on appeal.
 4. The applicant points to a previous application for prior approval for a similar scheme being refused and the appeal proposal having been designed to address all concerns. However, the Council's refusal of the subsequent application is not in itself unreasonable behaviour.
 5. The provisions of the GPDO and the PPG make clear that Class Q grants planning permission, subject to various provisos, for the change of use of agricultural buildings to Class C3 residential use and applications for prior approval should be considered in this context. Although the applicant is critical of the Council adopting an overly legalistic approach, the GPDO sets out a
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number of criteria and conditions which need to be met both in respect of whether the change of use is permitted development and whether the proposed works are permitted. Consequently, a systematic examination of these matters is a reasonable approach.

6. In respect of the matter of the floor area of the proposed dwelling, the appellant provided copy correspondence relating to another proposal in the form of a letter from The Planning Inspectorate and an extract from a DCLG email. This related to an appeal decision on which the Council relied. The Council expressed the view that the decision had not been tested in the courts and therefore they continued to rely on it. There is no evidence that the local planning authority took any additional advice in this matter either at the time of determining the application or at the appeal stage. In the light of the evidence provided to them, I consider that the Council's response on this matter is insufficient to substantiate the first reason for refusal and in this respect amounts to unreasonable behaviour.
7. With regard to whether the land was in wholly agricultural use, the applicant provided additional information in the form of Statutory Declarations. There is no requirement for evidence to be submitted in this form as part of an application for prior approval. However, notwithstanding the manner in which the Council expressed their views on the Statutory Declaration, the Council were not precluded from reaching a different conclusion based on what was seen and photographed by their officers during earlier visits to the site. Whilst the applicant's evidence covered the relevant date of March 2013, to benefit from the permitted development right it was not unreasonable for the Council to take into account what they saw during visits to the site. The second Statutory Declaration was submitted during the course of the appeal and therefore could not have been taken into account by the Council in reaching its decision or preparing its evidence in compliance with the timetable.
8. Class W places the onus on the developer to provide sufficient information to establish whether the proposed development complies with any conditions, limitations or restrictions in Part 3. A structural report was requested by the Council. The report prepared by the applicant's architect explained the principles on which the proposed dwelling would be constructed with regard to the concrete frame. However, it did not extend to being a full structural survey. Whilst the report made assumptions with regard to the footings under the existing walls, it did not explain that the alignment of the proposed walls would, for the most part, be different from the existing walls. Nor did it explain in detail why the new walls would require no footings or foundations, although it did state that the wall panels would hang from the existing frame. I consider that the level of information submitted with the original proposal and subsequent report was not sufficient to resolve these matters beyond doubt and therefore the Council did not behave unreasonably in this regard.
9. It was not necessary as part of my appeal decision to consider the Council's reasons for refusal relating to transport and highway impacts, or whether the proposed dwelling was undesirable on landscape grounds. The highway authority recommended that the proposal should be determined in accordance with standing advice. There is a bank which lies between the carriageway edge, the hedge and the gated access into the applicant's field, such that the access has a bank to either side. It was therefore not unreasonable that further information be sought with regard to the visibility at the point of access.

In any event the additional information submitted by the applicant amounted to annotation added to an existing drawing therefore I consider that the applicant incurred unnecessary expense in seeking to address this matter.

10. The PPG indicates that whether a proposal is undesirable may relate to whether it is harmful or objectionable. Given the isolated position of the building on rising ground and the level of glazing to be introduced into the road facing elevation, the Council exercised their judgement in raising this as a reason for refusal.
11. I have found that the Council acted unreasonably in failing to adequately substantiate the first reason for refusal and to this extent addressing this matter as part of the appeal process put the applicant to unnecessary expense in relation to this issue. However, I do not find that in other respects there was unreasonable behaviour and, given the findings in my appeal decision that the proposal would not be permitted development, an appeal could not have been avoided.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the Council's first reason for refusal and I conclude that a partial award of costs is justified.

Costs Order

13. In exercise of the power 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 Somerset District Council shall pay to Mrs A Bees the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the issue concerning the floor area of the building (refusal reason No.1).
14. The applicant is now invited to submit to South Somerset 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jennifer Tempest

INSPECTOR