
Costs Decision

Site visit made on 1 November 2016

by Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI

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

Decision date: 18 November 2016

Costs application in relation to Appeal Ref: APP/L3245/W/16/3156701 Ruckley Oak Barn, Ruckley, Shrewsbury, Shropshire SY5 7HR

- 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 Lucy Pulford for a full award of costs against Shropshire Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for change of use of agricultural building to a dwellinghouse.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that parties in planning appeals and other proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. 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 application for determination of prior approval in respect of this case was refused on the grounds that the building had not been used solely for agricultural use as part of an established agricultural holding on the relevant date. Furthermore, the Council also included refusal reasons relating to the effects on protected species and the effects on the setting of a heritage asset. The applicant suggests that the Council was excessive in its requirements to establishing the agricultural background going well beyond what is necessary particularly given the intentions of government to introduce flexibility in the permitted development regime thereby removing much of the bureaucracy associated with planning applications. Further, the applicant claims that ecological issues do not feature in the permitted development procedure. Finally, the applicant believed that the heritage related issues were introduced far too late in the process and was a surprise addition to the reasons for refusal. Taken together, the applicant suggests, this behaviour led to unnecessary inconvenience and expense.
 4. Clear criteria that a Local Planning Authority should have regard to is set out at Schedule 2, Part 3, Paragraph Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").
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Of these criteria (a) was the determinative issue in relation to the proposal together with the Conditions contained within Q.2 and particularly (e). Criterion (a) relates to the need to demonstrate that the building was being used solely for agricultural use as part of an established agricultural unit on the relevant date. Conditions are introduced in Q.2 that needs to be satisfied. The important element of relevance to this appeal relates to condition (1)(e). I am satisfied that the Council determined the application in line with the correct tests set out within the GPDO.

5. I also consider that it was necessary for the Council to consider the effects of the permitted development on protected species. This is required for all planning and related applications irrespective of whether the permitted development procedures apply to a given case. As a competent authority the Council has a statutory duty under regulation 9 of the Conservation of Habitats and Species Regulations 2010 to consider the effects on protected species. The applicant submitted appropriate surveys; these were considered and whilst taking the matter to a preliminary stage so as to determine whether protected species were present on the site, the applicant's own ecologist advised that additional survey work and possible mitigation was necessary. It is appropriate that the precautionary principles were applied by the Council. It could go no further with the information that was available to it.
6. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty that when considering whether to grant planning permission special regard must be paid to the desirability of preserving the setting of a listed building. I see no difference in applying the permitted development regime as Condition Q.2(e) of the GPDO requires the development proposal to demonstrate that the location or siting would make it otherwise impractical or undesirable for the building to change to Class C3 dwellinghouse. In reaching a judgement on whether the location is undesirable it would have been incumbent on the Council to apply the statutory tests. Whilst the reason for opposing the proposal on heritage grounds did not deal with the issue of the setting in a very comprehensive manner, it was entitled to reach a judgement on the effects of the permitted development proposal on the setting of the listed building. This it did so by reference to the potential domestication of the appeal site from its previous use as a traditionally designed timber framed agricultural barn.
7. I am mindful of the applicant's suggestion that the prior approval process is supposed to expedite planning decisions and not require an applicant to provide excessive amounts of detail. However, I am also cognisant of paragraph W of Schedule 3, Part 3 of the GPDO which sets out the procedure for applications for prior approval. This states at (3) (b) that the local planning authority may refuse an application where, in the opinion of the authority "the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with... any conditions, limitations or restrictions specified in this Part as being applicable to the development in question."
8. I am satisfied that the Council did not prevent or delay development. It was required to satisfy itself about the veracity of the information provided and to reach a reasonable judgement on the information provided. Whilst it could have carried out a more detailed assessment on the effects upon the listed building's setting, its conclusions were reasonably understood.

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9. For the reasons given above, the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of unnecessary or wasted expense. Accordingly, the application for an award of costs fails.

Gareth W Thomas

INSPECTOR
