The Planning Inspectorate

Costs Decision

Site visit made on 11 June 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Costs application in relation to Appeal Ref: APP/A2525/W/22/3311331
Barn to the East of Fifth Drove, Gosberton Clough, Spalding PE11 4JY

- 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 Caroline Wheeler for a full award of costs against South Holland District Council.
- The appeal was against the refusal of planning permission for the proposed change of use from an agricultural brick barn and conversion including an extension to form a residential dwelling (including demolition of the existing modern farm buildings).

Decision

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

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. Examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The applicant contends that for several reasons they incurred unnecessary costs in having to submit an appeal.

3. The Council changed its position from that on the previous decision notice for a broadly similar proposal, stating the building is now not of architectural and historic merit. This change was identified as based on the removal of vegetation which had previously obscured the building. However, the extent of the vegetation obstruction was not substantial at close range, nor did it cover more than a single elevation. I therefore find it reasonable that the applicant would have expected the identification of such merit to be consistent, and replicated within the subsequent decision notice. The Council did not fully substantiate this reason for refusal based on an objective analysis, and so acted unreasonably in this regard.

4. However, as the Council's evidence on this matter is only very limited, it would not have required significant time for the applicant to review and digest. The extent of the applicant's appeal documentation which is concerned solely with rebutting this element is not significant, and primarily repeats what was submitted with the application. Moreover, even had the Council retained its previous description, the appeal would still have been necessary overall for the interlinked refusal reason relating to the extent of conversion. Therefore

overall, I find insufficient evidence that the applicant incurred unnecessary or wasted expense through solely attempting to refute this aspect of the appeal.

5. I concluded that the proposal would not comply with criteria 1 of Policy 23 of the South East Lincolnshire Local Plan (SELLP) 2011-2036 (2019). I do not repeat my reasoning here as to why matters of structural design as they relate to Policy 23 are planning judgements, and that full structural calculations could not instead be required through a pre-commencement condition. I therefore do not find that the Council provided vague, generalised, unreasonable, or inaccurate assertions overall about the structural evidence submitted.

6. It was not unreasonable of the Council to refer to Hibbitt v SSCLG [1]. While the specifics of the cases differ, I took the reference to be an indicator of how the courts have considered the issue of conversion, rather than a direct comparison. In any event, this case was not determinative.

7. While Building Control confirmed that it would be possible to carry out the conversion in the proposed manner, this in itself does not indicate that the works would fall within the required policy remit of a conversion. Furthermore, I do not find it necessary for the Council to need to provide its own structural evidence for this small-scale proposal. The Council was able to come to a decision based on the professional advice and judgement of its officers.

8. With relation to consistency of decision making for other conversions across the District, each must be addressed on its own merits as the precise context will differ, especially in judgements on matters of structural integrity.

9. While I disagreed with the Council that further testing of the building subsoils was necessary, this was also a matter of planning judgement in this instance. I do not find that the Council was unreasonable in this regard.

10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L Hughes

INSPECTOR

[1] Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)