
Costs Decisions

Site visit made on 8 November 2016

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 24 November 2016

Costs application in relation to Appeal Ref: APP/X2220/W/16/3153138 The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB

- 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 Martin Towns for a full award of costs against Dover District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for change of use and conversion to 2 dwellings (1x4 bed/1x5bed), works to create car parking and erection of boundary treatment including demolition of existing toilet block and outbuilding.
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Costs application in relation to Appeal Ref: APP/X2220/Y/16/3153139 The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Martin Towns for a full award of costs against Dover District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for internal and external alterations to facilitate conversion into 2 dwellings including erection of party wall, blocking of existing doorway, insertion of new window to ground floor south elevation, demolition of existing lean to toilet block and curtilage listed outbuilding.
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Decisions

1. I allow the applications for an award of costs in the terms set out below.

Reasons

1. The Planning Practice Guidance 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.
 2. There appears to have been a long history to the Council's consideration of these applications, but mainly with regard to the planning application and the proposed change of use. Nevertheless, the Council's submission that listed building consent could not be granted until the benefits had been considered as part of the planning application appears reasonable. Any harm that the Council identified would have to be balanced against benefits according to paragraph 134 of the Framework, but in the absence of that balancing exercise a refusal of listed building consent would not have been helpful, so some deferment along with the planning application was indicated.
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3. Turning to the planning appeal, there would have been reasons for delay caused by the original decision to place the building on the list of Assets of Community Value on 15 May 2015 and after the original applications in March of that year, but that decision was overturned on appeal and the decision of 24 August 2015 was to remove the Red Lion from the list.
4. The Council should have been aware that from the date of the removal from the list of Assets of Community Value, change of use to retail or professional services under the Town and Country Planning (General Permitted Development) (England) Order 2015 could have taken place, as Part 3, Class A of Schedule 2 came into effect prior to that date. At that time the loss of the Red Lion as a public house could have occurred.
5. The appellant claims that no harm occurs and that under Policy DM24 there would be no need to continue to address viability. The Appeal Decision that accompanies this Cost Decision has taken a precautionary approach, mainly because conclusive viability and marketing information was available, and in view of the wording of the policy which does not seek to qualify or quantify harm in the way that the supporting text does.
6. By the time the June committee meeting took place there does not appear to have been proper planning reasons remaining to defer the Council's decisions, and the further deferment was unreasonable. The fact that the appellant chose to make the appeal rather than risk further delay and uncertainty was reasonable. The Committee's eventual decision that permission and consent would have been granted would not have been seen by the appellant as a foregone conclusion at the time that the appeal was lodged.
7. On the information available, there is insufficient evidence of proper planning reasons to have not made a decision in favour of both the planning application and the listed building consent application. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in making the appeals, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified covering both appeals.

Costs Order

8. 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 Dover District Council shall pay to Mr Martin Towns, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
9. The applicant is now invited to submit to Dover 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.

S J Papworth

INSPECTOR