
Costs Decisions

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 December 2016

Costs application in relation to Appeal Refs: APP/X1925/W/16/3154355, APP/X1925/Y/16/3154356 & APP/X1925/W/16/3154357

The Fox and Hounds, High Street, Barley, Royston, Hertfordshire SG8 8HU

- 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) & under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3.
 - The application is made by Mr Adrian Parkes of Parkes Barley Ltd for a full award of costs against North Hertfordshire District Council.
 - The hearing was in connection with three appeals against the refusal of the Council to grant planning permission for the change of use of the existing public house to two 4-bedroom dwellings (Appeal A), the erection of one 2-bedroom dwelling with associated car parking spaces, alterations to existing access onto Church End and ancillary works (Appeal C), and its refusal to grant listed building consent for replacing two doors on the east elevation with windows and internal alterations to facilitate the above change of use (Appeal B).
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Decision

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

The submissions for Mr Adrian Parkes of Parkes Barley Ltd

2. The costs application is made in respect of the three appeals as a whole. It is made on the grounds that the Council has failed to justify why it considers that the pub would be viable in the future in the face of the appellant's viability evidence and refused to allow the appellant to submit further input on the mooted repair costs to the building.
3. It is also made on grounds that the heritage objections are unfair in that they are unreasonably confused with the future viability of the pub whereas in reality they are separate issues.
4. The appellant also argues that these matters were compounded by the Council's unreasonable failure to agree a Statement of Common Ground (SoCG), which necessitated increased coverage of issues at the Hearing.

The response by North Hertfordshire District Council

5. The Council points out that it could have refused the application initially because there was no viability justification for the proposal but it requested the applicant to submit a viability report and then asked it to pay for an independent assessment of it (the TSC report), which the applicant refused to
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pay for when he was informed of its recommendation. The reason for requesting this report was that its planning officers are not experts in viability matters. Hence the Council allowed an extended time period for the appellant to justify the proposal on viability grounds; there comes a time when an application simply has to be decided.

6. The Council considers it addressed both the viability issues and its concerns about the impact on the heritage designations. The two issues are closely interlinked because the Council argues that the loss of the pub use would harm the latter.
7. The Council was not prepared to sign the SoCG provided by the appellant because it disagreed with elements of it.

Reasons

8. Irrespective of the outcome of an appeal, Planning Practice Guidance (PPG) advises that costs may only 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.
9. The Council has justified its decisions to refuse the applications on viability and heritage grounds. In my decision I agree with the Council's viability arguments and that the unnecessary loss of the pub would harm the character of the conservation area, so its case was clearly justified. The Council allowed the appellant adequate time to submit his representations on viability at application stage.
10. I agree with the appellant that the Council to some extent muddled up the physical impact of the proposed development on the heritage assets, which I concluded was acceptable, with the impact of the loss of the pub use. But I agree with the Council that the issues of viability and heritage are linked in this case and although it could have put its arguments forward in a clearer way its behaviour was not manifestly unreasonable.
11. The appellant's first version of the SoCG clearly contained paragraphs within the 'area of agreement' that the Council were not going to agree to. The appellant argues that version two of the SoCG had nothing within it to which the Council could not realistically agree and cites paragraphs 6.2 and 6.10 as examples.
12. But the Council did not agree with paragraph 6.10, albeit that I disagreed with its objection in my decision. It also in effect disagreed with paragraph 6.2 as I heard at the Hearing although its viability argument in this respect was more nuanced. But I can fully understand why it was unwilling to sign up to that paragraph given the complexities of the overall viability issue.
13. That said, the Council's attempt at a SoCG was so peremptory that it was essentially meaningless. The Council should in my view simply have drafted its own SoCG in full setting out the areas with which it agreed and tried to agree it with the appellant or attempted a meaningful discussion to try and agree the wording of version two of his document. Its failure to do so was in my view unreasonable.
14. However, given the interlinked issues in this case it was always going to be difficult to arrive at any meaningful 'areas of agreement' and it was inevitable

that the matters mooted in version two of the appellant's SoCG would have to be (and were) discussed at the Hearing, and so the appellant has not been put to additional expense. It was always going to be necessary for him to have both viability and heritage experts at the Hearing, for example.

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nick Fagan

INSPECTOR