
Costs Decision

Site visit made on 17 March 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 25 July 2017

Costs application in relation to Appeal Ref: APP/J3530/W/16/3161862 The Button Moon and Mushroom Inn, High Road, Swilland, IP6 9LR

- 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 E Gavin for a full award of costs against Suffolk Coastal District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
-

Decision

1. The application 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.
3. The applicant's main claims relate to the Council's conduct during the application process and the failure to substantiate the reasons for refusal. The appealed application relates to the use of the building without complying with condition 3 of application DC/15/0529/FUL. The reason given for the condition was *'To safeguard the residential amenity of the existing and future occupants of The Button, and the future viability of the Public House'*.
4. The PPG is clear that *'...under s73 the LPA must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application¹.'* The Council refused the proposal for three reasons which raised the provision of an independent dwelling in the countryside, the living conditions of future occupiers and the link to the future of the public house.
5. The Council's committee report considers these issues and makes reference to relevant policies from the development plan. However, I agree with the applicant that in refusing the current application the Council has misdirected itself in reconsidering the whole proposal rather than just the matters relevant to the condition in dispute.

¹ ID 21a-031-20140306

6. The reason for the imposition of the condition raised two points. The issue of living conditions of future occupiers is clarified by the Council as relating to the relationship between the Button and an existing window and the location of extraction and chiller units. The committee report provides views from the Council's Environmental Health Officer about the possible issues and mitigation that could be undertaken. It is clear at that point the acoustic report has been considered. The Council's appeal statement further amplifies its concerns on these points with reference to the relevant local and national policies.
7. Turning to the other issues raised regarding the provision of documents. From the information before me it appears to me that the Council has returned the required appeal documents and adhered to timetables. I have no substantive evidence that relevant information has been deliberately concealed. The issue of a 'lawful' use of the buildings has also been raised. I have no evidence that there is a certificate of lawfulness in place. In any event the application to which the disputed condition relates is for the change of use to an independent dwelling. This was granted subject to conditions and this appeal is concerned solely with whether that condition is necessary and reasonable as detailed within my decision.
8. Overall, I consider that the Council has adequately defended its position at appeal for reasons 2 and 3. However, the approach to the application and the misdirection in approach that led to reason 1 is in my view unreasonable behaviour as defined in the PPG and could have been avoided if the case was reviewed and assessed within the parameters of s73. As such a partial award of costs relating to the defence of this reason is justified.

Costs Order

9. 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 Suffolk Coastal District Council shall pay to Mrs E Gavin, the costs of the appeal proceedings described in the heading of this decision in so far as they relate to reason for refusal 1.
10. The applicant is now invited to submit to Suffolk Coastal 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.

D J Board

INSPECTOR