

Costs Decision

Hearing Held on 6 July 2017 and 3 October 2017

Site visit made on 6 July 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 14th November 2017

Costs application in relation to Appeal Ref: APP/H1705/W/17/3169774 The Old House at Home, Tylney Lane, Newnham RG27 9AH

- 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 Red Oak Taverns for a partial award of costs against Newnham Parish Council.
 - The Hearing was in connection with an appeal against the failure of Basingstoke and Deane Borough Council to issue a notice of their decision within the prescribed period on an application for planning permission for the change of use from A4 public house to C3 residential dwelling house.
-

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

The submissions for Red Oak Taverns

2. The gist of the appellant's application for costs is that the Parish Council introduced late evidence which necessitated an adjournment to allow him to properly consider it before responding.
 3. In the morning of the Hearing, the Parish Council submitted a copy of a letter from the Department for Communities and Local Government (DCLG) giving it approval for a loan from the Public Works Loan Board to purchase and refurbish the pub. The amount of the loan had been redacted. Despite the letter being dated 15 June 2017, and not having seen the document before, the appellant did not contend that submission and the Hearing proceeded.
 4. However, in the afternoon, the Parish Council submitted an unredacted copy of the same letter. This was fresh and substantial evidence on an important issue in the appeal to which the appellant could not respond immediately at the Hearing, without prejudice to his position.
 5. The letter was available to the Parish Council to disclose for up to 21 days prior to the Hearing. If the letter had been provided in advance of the Hearing, the appellant would have prepared accordingly and the adjournment would have been avoided. The late submission of the unredacted letter amounted to wholly unreasonable behaviour which has caused the appellant unnecessary, additional expense.
-

The response by Newnham Parish Council

6. The Parish Council had already indicated in its submissions that it was seeking the loan, and the amount sought. It had withheld the amount of the loan offer for commercial reasons, but realized during the course of the Hearing that its case may be taken less seriously without its disclosure. In any event, it was unreasonable to adjourn, because there was no need for the appellant to reconsider their previous submission and to submit a further report as the viability argument did not turn on the amount of the loan. The discussion on the second day of the Hearing could have taken place on the first day.
7. The Parish Council had understood that a Hearing was an informal process and did not anticipate that an adjournment would be made. Moreover, it has a very low income and relies on volunteers; an award of costs against it may affect the work it undertakes in the community.

Reasons

8. 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. It indicates that an award against an interested party may be made on procedural grounds where an unnecessary adjournment of a Hearing is caused by unreasonable conduct.
9. I note that the Parish Council's evidence referred to an application to the Public Works Loan Board; however, there was no certainty to the outcome of the application or the amount of borrowing. Without the knowledge that the Parish Council had been offered the loan, the appellant's evidence on viability was based on commercial financing, and concluded that the pub did not represent a financially viable proposition.
10. The disclosure of the loan offer was of crucial importance to the strength and certainty of the viability case advanced by the Parish Council. Indeed, the appellant's expert conclusion after considering this evidence was that under the Parish Council model the pub became marginally viable.
11. The loan letter was dated 3 weeks prior to the Hearing. Its submission in the afternoon of the Hearing was entirely unreasonable and meant that the appellant would have been put at a disadvantage if discussion on viability had continued. It was fair for the appellant to be given time to fully consider the loan amount offered and its significance in terms of viability and to review the evidence he had already submitted. To have had to respond that afternoon, without the opportunity to properly consider the late evidence, would have placed the appellant at a disadvantage.
12. I appreciate the sensitivity of the content of the letter to commercial negotiations which may have been running parallel to the appeal, and I acknowledge the financial circumstances of the Parish Council. However, this does not absolve the Parish Council of its responsibilities in a Hearing, which, though less formal than an Inquiry, is governed by rules to ensure fairness. The Parish Council was professionally represented and its evidence included expert reports. The procedure rules are clearly set out in publicly available guidance¹ which warns that if the Inspector accepts late evidence this may

¹ Procedural guide to planning appeals – England (August 2016)

result in the need for an adjournment, and that an application for costs may follow. The remainder of the Hearing agenda was completed on the first day so that only the issue of viability remained to be heard after the adjournment. This limited the amount of wasted or unnecessary expense.

13. I find that unreasonable behaviour, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to the adjournment.

Costs Order

14. 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 Newnham Parish Council shall pay to Red Oak Taverns, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the second day of the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Newnham Parish 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.

Patrick Whelan

INSPECTOR