



Costs Decision

Hearing Held on 17 December 2019

Site visit made on 17 December 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/W0340/W/19/3237025

**Winterbourne Arms, Winterbourne Road, Winterbourne, Newbury
RG20 8BB**

- 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. Nicholas Roffe for a full award of costs against West Berkshire Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as conversion of existing public house to a residential dwelling.
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Decision

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

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 claims that the Council acted unreasonably on grounds which I summarise as:
 - a) making vague, generalised or inaccurate assertions in relation to viability and marketing, which are unsupported by any objective analysis, and indeed refusing planning permission partly on this basis;
 - b) failing to request information in relation to heritage and ecology at the application stage which could have avoided refusal on these grounds; and
 - c) failure to withdraw its reason for refusal on ecological grounds despite evidence being presented, necessitating additional costs in relation to an expert witness.
4. The Viability Report (VR) commissioned by the Council reached a view that the Winterbourne Arms could not be viably returned to use as a pub. It nonetheless also indicated that viability turned on the condition of the building. In this regard, whilst the VR touches briefly on past marketing, it does not consider valuation. The marketing evidence is itself old, relating to the sale by the previous owner to the appellant. There is therefore no up-to-date marketing evidence based on a realistic valuation of the building in its current condition. As neither the VR nor the marketing evidence can therefore be held to prove that the Winterbourne Arms has no future as a public house, the Council did not act unreasonably in arriving at the

view that the pub was potentially viable, or therefore refusing permission partly on this basis. Ground (a) therefore fails.

5. The PPG states that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however behaviour and actions at the time of the planning application can be taken into account. In this regard the Council does not dispute that information on heritage and ecological matters was not requested at application stage. In my view this was unreasonable. Given my finding in relation to ground (a) however, it is apparent that even if the Council had sought this information, it would have made no difference to the Council's decision, which was principally concerned with the proposed change of use. It would also not therefore have avoided the case coming to appeal.
6. In relation to the appeal itself, the applicant incurred costs in commissioning the bat surveys. The same costs would however have been incurred had the surveys been undertaken at or before application stage. Insofar as these surveys were essential, the related costs were necessary. Little or no expense appears to have been generated in relation to heritage at appeal stage. Indeed, no heritage impact assessment or other detailed evaluation of the matter was provided by the applicant. In the absence of any unnecessary or wasted expense, ground (b) fails.
7. Following submission of the bat surveys with the appeal it would have been reasonable for the Council to withdraw the related reason for refusal, and accept that the matter could be dealt with by condition. This is because the surveys set out in no uncertain terms that bats were absent from the building, and that enhancements could be achieved. The Council's stance however appears to have been to continue to defend the principle of its original refusal, rather than to accept that the reason was no longer valid. This was unreasonable.
8. I acknowledge that the applicant therefore engaged an ecology consultant to attend the hearing as an expert witness. I also note that the applicant warned the Council in advance of his intention to do so. Be that as it may however, in view of my finding above, it was not essential for the consultant to attend the hearing. Indeed, in the absence of any substantive case on the Council's side, this served little purpose other than to confirm the content of the survey reports. The expense involved was therefore unnecessary. However, in my view this could have been reasonably anticipated by the applicant, and therefore simply avoided. I therefore place the responsibility for this expense with the applicant rather than with the Council. Consequently, ground (c) fails.
9. Whilst not forming one of the main grounds of the application for costs, the applicant additionally notes a delay in the Council's determination of the planning application. The date of determination was extended twice. It is apparent that the first extension of time was agreed, but it is unclear whether the second extension, which expired on the date the Council issued its decision, was also agreed. It is therefore unclear whether or not the Council acted unreasonably in this regard. Either way, the delay did not cause any obvious wasted or unnecessary expense in the context of the appeal, and therefore no basis for an award of costs exists.

Conclusion

10. For the reasons set out above I conclude that the applicant's claim for a full award of costs should be dismissed.

Benjamin Webb

INSPECTOR