



Costs Decision

Hearing Held on 10 December 2019

Site visit made on 10 December 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Costs application in relation to Appeal Ref: APP/Y2736/W/19/3223570 Royal Oak Inn, Church Street, Nunnington, North Yorkshire YO62 5US

- 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 Jill Greetham for a full award of costs against Ryedale District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of public house/restaurant to private dwelling.
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Decision

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

The submissions for Mrs Jill Greetham

2. The applicants claim was substantially made in writing before the hearing and is based upon both the "procedural" and the "substantive" routes defined in the National Planning Practice Guidance (PPG) and flows from the decision of the Local Authority to give no weight to the evidence that they themselves procured relating to the viability of the Royal Oak, but instead, to procure after the appeal a wholly new and contradictory alternative report.
3. In summary, the Council in ignoring;
 - (i) the advice of their planning officers,
 - (ii) the advice of external planning consultants, brought in to assist the decision-making process,
 - (iii) the advice of their chief solicitor who interrupted the meeting to advise members against refusal as a course of action,
 - (iv) their own independent consultants report on viability,
 - (v) and despite having three attempts at determining the application,refused the application against their own overwhelming evidence that the proposal was policy compliant. This demonstrates a perverse and unreasonable behaviour that sets out why a full award of costs in this instance should be made.
4. Furthermore, the submission of a late report retrospectively justifying the decision has put the applicant to considerable additional time and expense over and above the general time and expense in pursuing the initial grounds of appeal. The fact that the Planning Authority did not share this report at the first available opportunity or discuss its contents with the applicant has exacerbated the distress of the situation.

5. The applicant has also stated that evidence such as sales marketing, work undertaken to the property, details of marketing and promotion of the public house as an eating establishment as well as a pub, together with financial records, were provided to the Council.
6. At the hearing itself, the question of need (in the context of Policy SP11 of The Ryedale Plan – Local Plan Strategy (2013) (LP)) was also re-iterated given the evidence presented at the hearing itself.

The response by Ryedale District Council

7. In summary, the Council acknowledge that the Officers report to each committee meeting recommended approval. However, the Council indicate that its Committee did not simply ignore the advice of its officers nor did they ignore the evidence that had been sought to advise the Council. The elected Members fully evaluated the evidence and, in this instance, formed a different view. This does not mean that their decision was perverse or sufficiently contrary to constitute unreasonable behaviour.
8. The application was presented to three committee meetings and Members eventually gave considerable weight to the fact that the property had not been marketed at an appropriate price, that being the price of a public house as a commercial enterprise. The evidence obtained by the Council at the point of the decision being made demonstrated this point, and this point has since been developed by the subsequent report. At the committee meeting when the application was finally determined, Members remained of the opinion that the key issue was the lack of marketing of the premises at a viable price.
9. As part of the determination process, external advice was sought from external advisors, including the Fleurets report and a planning consultant (Jenifer Hubbard) and these were also before the committee. It was also reported that an offer had been made for the premises based on the price that the applicant had previously paid, minus the costs of reinstating the kitchen, and further discussion around fixtures fittings and stock.
10. Following the submission of the appeal, the Council sought further independent advice (Michael Hughes). The advice was sought to provide a second professional opinion in relation to the appeal, on a matter already at issue.
11. The Council appreciate that the approach to the consideration of economic viability can be balanced and can also be viewed in different ways. It is clear however that the reason for refusal related to the need to market the property at a realistic commercial price and that potential remains for a viable enterprise carried out from the site on that basis.
12. It is noted that both the Fleurets and the Michael Hughes report are (apart from the question of the approach to economic viability) are in broad agreement on the valuation of the enterprise and this is the issue with which Members were most concerned with.
13. It is the Councils view that the decision to refuse the application was not unreasonable nor is the seeking of a further professional second opinion to clarify a point on which the Council had concern. It is an entirely appropriate response.

14. It is also noted that at no point during the consideration of the planning application, and as part of this appeal, has the appellant submitted any detailed viability evidence. It is the Council who has, at each stage, sought to obtain independent, objective, advice from suitably qualified professionals.
15. In response to the need aspect at the hearing The Council re-iterated its view that all local needs were not met by other premises and that in taking this into account Members views were not unreasonable.

Reasons

16. The PPG advises that, irrespective of the outcome of the appeal, 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.
17. That said, the PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
18. The Council have correctly identified that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs in itself as the Committee were entitled to come to their own conclusions on the merits of the proposal.
19. I am also mindful of Paragraph: 049Reference ID: 16-049-20140306 of the PPG which indicates that a local planning authority would be at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal *on appeal* (my emphasis).
20. Taking this into account, I find that the Councils decision to seek further external advice from Mr Hughes was a perfectly normal and reasonable course of action to take. Furthermore, this subsequent report was submitted in accordance with the timescales set out in the appeal process.
21. However, it is significant that Mr Hughes's evidence relates to the economic viability aspect and does not provide any evidence in relation to need and the availability of other suitable public houses in the surrounding area.
22. As set out in the submitted evidence, and agreed at the hearing, Policy SP11 of the LP only requires one of the three exemptions to be demonstrated for the development to be policy compliant.
23. The first strand of this part of the policy relates to the need for the facility and whether suitable and accessible alternatives exist in the surrounding area. However, the Council have set out that the need aspect was not the primary reason for refusal. Notwithstanding that, given that Policy SP11 only requires one aspect to be demonstrated it is nevertheless an equally important matter.
24. As part of the appeal proceedings the Council have provided little evidence on this aspect, with the main focus being that there should be a meeting place open outside of the working day and within walking distance for the residents

of Nunnington. The Council appear to have relied heavily on local residents to support this part of their reason for refusal.

25. In my decision I have found that whilst there is a clear need for a public house this need could be served by other premises in the surrounding area. Whilst this is a matter of planning judgement, the independent evidence before the Council was clear that there were sufficient and better located premises that could cater for the community needs of the area, albeit not within walking distance for the residents of Nunnington.
26. Given the Councils limited consideration of this matter I find that the Council has not provided sufficient evidence at appeal to justify its view that the proposal would not accord with this aspect of Policy SP11.
27. This is perhaps demonstrated by the Councils own admission that this was not its primary concern and the evidence suggests that it became fixated with the economic viability arm of Policy SP11 and the value that the property had been marketed for sale at. In my view, this was no doubt a consequence of the wholly unrealistic price that the premises had been marketed at. This clearly did not help the applicants case when the Council considered the application.
28. Having said that, had the Council properly considered the need aspect, it would not have been necessary to deal with the economic viability matter as compliance with Policy SP11 would have already been demonstrated. With that in mind, I find that the Council has acted unreasonably and this has ultimately led to the applicant to incur the costs of the appeal process.
29. As in my appeal decision, the matters relating to economic viability are not therefore determinative matters, as compliance with Policy SP11 had already been demonstrated. Nevertheless, all the additional work by the applicant on this matter has been unnecessary and will have no doubt resulted in additional expense as a result.

Conclusion

30. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to noise and odour matters and therefore a partial award of costs is justified.

Costs Order

31. 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 Ryedale District Council shall pay to Mrs Jill Greetham, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
32. The applicant is now invited to submit to the Ryedale 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.

Chris Forrett

INSPECTOR