



Costs Decision

Hearing Held on 10th and 11th November 2020

Site visit made on 6 November 2020

by Helen B Hockenhull BA (Hons) B.PI MRTPI

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

Decision date: 18th December 2020

Costs application in relation to Appeal Ref: APP/E2734/W/19/3240780 Henry Jenkins Inn, Main Street, Kirkby Malzeard, North Yorkshire HG4 3RY

- 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 J G Claybourn for a full award of costs against Harrogate Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the conversion of part of a public house and flat to create 1 no. dwelling.
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Decision

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

The submissions

2. An oral application for costs was made at the hearing. The appellant submitted that the Council had behaved unreasonably on three main grounds. Firstly, that the development should clearly be permitted having regard to the development plan, the National Planning Policy Framework (the Framework) and other material considerations. Secondly that the Council failed to produce evidence to substantiate the recommendation for refusal and thirdly, that vague, generalised or unacceptable assertions about the proposals impact were made which were unsupported by objective analysis.
3. An oral response was made by the Council at the hearing and the appellant was given the opportunity to make final comments at the event.

Reasons

4. Planning Practice Guidance (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 expense in the appeal process.
5. The Council substantiated its reasons for refusal in the Planning Officers report and the Statement of Case. Following the adoption of the Harrogate District Local Plan 2014-2035, and the resultant policy change, the Council reviewed its case. The Council's assessment led to the same conclusion, that the proposal was contrary to Local Plan policy.
6. The Council considered the specific marketing requirements of Policy HP8 of the Local Plan set out in the supporting text. The purpose of supporting text is to

- provide guidance on the application of the policy. It was therefore appropriate to take this into account and assess the appeal proposal accordingly.
7. In assessing the marketing undertaken, the Council came to the view that it was deficient in relation to Policy HP8. I acknowledge that the Planning Officers report did not go through each individual requirement as set out in the supporting text and assess compliance. This may have been more thorough, however the Council's justification for their view was sufficiently explained in their report.
 8. The appellant has submitted that the Council did not undertake an independent assessment of the business plan put forward by the Henry Jenkins Community Pub Ltd (HJCP). However, the plan related to the whole site, not just the appeal building. In these circumstances it is understandable that the Council did not make a detailed analysis of the document.
 9. The Council did not undertake an assessment of wider community needs; however, this was not required by local plan policy. The Parish Council were well placed to advise on such matters alongside local residents.
 10. In coming to their decision, the Council took account of other material considerations including the length of time the appeal building had been vacant, the marketing exercise and the availability of the remaining pub. The weight given to each of these in coming to their decision was a matter for the Council as decision maker.
 11. Whilst referencing the Asset of Community Value (ACV) designation, the Council argued that this was not a planning consideration. It was not unreasonable to take this view as the listing of an ACV requires an assessment of a building and its use against a range of criteria which are unrelated to planning. I have considered the listing to form a material consideration, however a listing as an ACV does not outweigh the requirement of a proposal to comply with local plan policy.
 12. The appellant suggests that the Council equated the aspirations of the HJCP with the needs of the village. From the evidence before me I do not consider this to be the case. The Council has not tried to suggest what the needs of the village may be. The proposals of the community group are for them to put forward on behalf of their members, they do not necessarily represent the views of all in the village.
 13. The Council's Planning Officer report includes a number of quotes from the previous Inspector's decision for the redevelopment of the site.¹ This decision forms a material consideration and thus it is appropriate to refer to it. Whilst the previous appeal was for a different proposal and for the whole of the site, it was not unreasonable for the Council to consider relevant sections of the decision, if they felt they were pertinent to the current appeal proposal.
 14. In considering whether a satisfactory replacement community facility would be available in line with criterion B of Policy HP8, the Council Planning Officer's report outlined deficiencies in the planning application submission, namely that there was no evidence of how the remaining pub would meet the community needs or be available to meet these needs. It would have been open to the Council to seek further information, though the difficulty in this case was that

¹ Appeal Ref: APP/E2734/W/17/3184236

the appellant did not own the remaining pub and therefore had no control over its use. It was understandable that in these circumstances the Council did not pursue this matter, concluding that the existing pub and other facilities in the locality did not constitute a replacement facility.

15. Given the above, I conclude that the Council produced sufficient evidence to substantiate their reasons for refusal and that the Council did not make vague, generalised or unacceptable assertions about the proposal impact unsupported by objective analysis. The issues were complex, complicated by the appeal relating to only part of the Henry Jenkins Inn. Whilst I have come to a different conclusion to the Council and allowed the appeal, it was not clear cut that the development should be permitted having regard to the development plan, the Framework and other material considerations. The Council was entitled to come to the view that planning permission should be refused based on the submitted scheme and supporting evidence. In my view therefore, unreasonable behaviour has not been demonstrated.

Conclusion

16. I consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. Consequently, for the reasons given above, the application for full award of costs is refused.

Helen Hockenhull

INSPECTOR