



Costs Decision

Site visit made on 24 August 2021

by F Wilkinson BSc (Hons), MRTPI

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

Decision date: 15th September 2021

Costs application in relation to Appeal Ref: APP/X1355/W/21/3275539 Smiths Arms, Forge Lane, Castle Dene DH3 4HE

- 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 Brown of KBMB Developments for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for the conversion of existing pub into a single residential unit, with associated landscaping, demolition of outbuildings, construction of new workshop and garage.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant claims that the Council has acted unreasonably for several reasons all of which the Council disputes.
4. The applicant claims that the Council has acted unreasonably by refusing permission for a development that is acceptable. In addition, the Council has not demonstrated tangible harm and has used a subjective and unsubstantiated reason for refusal that is not based on sound planning grounds, reasonableness or a proper balancing of the evidence.
5. The reason for refusal set out in the Council's decision notice is precise, specific and relevant to the application. It also clearly states the policies of the County Durham Plan (the LP) and those of the National Planning Policy Framework (the Framework) that the proposed development would conflict with. This reason has been substantiated in the Council's officer report, which also clearly sets out the planning balance. I do not therefore agree that the Council has acted unreasonably with regard to these matters.
6. The applicant states that the Council was unreasonable in refusing the application due to a lack of marketing as this information is not required by any policies and adequate marketing information was submitted with the application.

7. Although the provision of marketing information is not specifically referred to in Policy 10 of the LP, the supporting text states that a change of use of any such building must be clearly justified on a case-by-case basis according to their individual circumstances. Given the context of the application, the Council was not unreasonable in requesting marketing information to justify the proposed development. Furthermore, it will be seen from my decision that I agree with the Council that insufficient marketing information was provided.
8. The applicant states that appropriate weight was not given to other establishments in the locality. The officer report summarises the supporting text for Policy 9 of the LP including that particular consideration will be given to the accessibility or availability of equivalent facilities nearby and the role that facility plays within the settlement. The officer report then goes on to consider other pubs in the vicinity in the context of the proposed development. The officer report did therefore address this matter. The apportionment of weight is a matter for the decision maker.
9. The applicant contends that the Council took an incorrect, imbalanced and unreasonable consideration of the proposed development due to the objections received and that the application became politicised due to its consideration close to local elections.
10. The supporting text to Policy 9 of the LP states that the views of local people and relevant town or parish councils will be of particular importance in assessing applications that would potentially see the loss of community facilities. The Council did not therefore act unreasonably in taking account of the comments submitted on the application. The Council has highlighted that the applicant was given the opportunity to provide more evidence to support his case but was unable to do so. I also note the Council's comments that its determination of planning applications continues during the pre-election period, which in my experience is a common approach.
11. The applicant also refers to the positive pre application advice received. Informal advice provided before an application is made is given without prejudice and does not pre-determine the outcome of a subsequent application. In addition, I note that the pre application advice included a caveat relating to the need to demonstrate that the pub is no longer viable and to provide marketing information, without which the loss of the pub would not be supported.
12. Accordingly, I do not agree that the Council failed to properly evaluate the effects of the proposed development or consider its merits. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision, and these are based on a conflict with the development plan and the Framework. Therefore, the appeal could not have been avoided.
13. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

F Wilkinson

INSPECTOR