
Costs Decision

Site visit made on 16 August 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Costs application in relation to Appeal Ref: APP/C1435/W/20/3264403 Land adjacent to Whitethorn, Back Lane, Waldron, Heathfield TN21 0NH

- 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 Steven Taylor for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for conversion and change of use of stables to holiday let.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. Planning permission was refused against professional advice. This in itself does not constitute unreasonable behaviour. Members are not bound to accept the recommendations of their officers. An award of costs would only be warranted where the Council cannot produce relevant evidence to show that there were reasonable planning grounds for taking a contrary view.
4. Planning legislation dictates that the starting point for any assessment should be the development plan. The Planning Committee was therefore required to consider whether the proposal was compliant with Policy DC7 of the Wealden Local Plan (WLP), including in relation to the nature of works required to convert the building. The appellant's structural engineer considered the building to be of 'sound construction' and structurally suitable for conversion, but the advice was caveated with recommendations to carry out further investigative work. In my decision I have taken the view that the primary structure of the building can be retained, but this involved the exercise of planning judgement and therefore the Committee was entitled to reach a different conclusion based on the evidence presented.
5. What the Council has not done is to recognise the more up-to-date policy within the Framework, in particular its support for sustainable rural tourism and the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings. These are important material considerations which should have been explicitly taken

into account in the Council's decision. The authority has not given an adequate explanation as to why Policy DC7 of the WLP has been slavishly applied against the background of national policy which provides greater flexibility.

6. Instead, the Council has argued that the proposal would result in the loss of existing stabling without any evidence to demonstrate that the proposed tourist accommodation would be viable. It is stretching a point to describe stabling as a community facility within the meaning of paragraph 84 (d) of the Framework. Moreover, there is no requirement in either local or national policy to consider viability in relation to proposals such as this. Development plan policy does not stipulate that buildings should be empty or redundant prior to being considered for conversion. This aspect of the Council's case had no grounds in policy and was spurious.
7. Had the Committee applied policy from the development plan and Framework correctly, and taken proper account of officer advice, there is a high probability that it would have granted planning permission. The lack of any rational basis for refusing permission means that the appellant has been forced to lodge an appeal which could have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In the 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 Wealden District Council shall pay to Mr Steven Taylor, the costs of appeal proceedings described in the heading of this decision. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Wealden 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.

Robert Parker

INSPECTOR