



Costs Decision

Site visit made on 20 September 2022

by L Douglas BSc (Hons) MSc MRTPI

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

Decision date: 5 October 2022

Costs application in relation to Appeal Ref: APP/B1930/W/21/3285540 The Chalkdrawers Arms PH, Roestock Lane, Colney Heath, St Albans

AL4 OPP

- 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 Bluestone Landscapes Ltd. for a full award of costs against St Albans City Council.
 - The appeal was against the refusal of planning permission for proposed development described on the application form as: Change of use of public house to create one, three-bedroom dwelling and office accommodation with associated parking, landscaping and external works.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. It is claimed that the Council's failure to refer to any development plan policies relating to the retention of public houses in its pre-application advice response was unreasonable and led the applicant to the reasonable and informed view that there were no adopted local plan policies which would relate to the loss of a public house. The applicant also claims that they would not have been aware that a marketing exercise would have been required to accompany the planning application because the pre-application response only advised they should robustly justify the proposed loss of the public house. The Council's decision to grant planning permission for the replacement of a public house with dwellings at The King Offa¹ after the submission of the appeal has also been highlighted to refer to an inconsistent approach adopted by the Council when considering planning applications concerning the loss of public houses.
4. The Council has advised that the pre-application advice referred to an emerging local plan, which was a material consideration at the time of that advice. The emerging local plan was then withdrawn prior to the planning application being considered. It has also claimed that in relation to The King Offa, as it had been demonstrated that the public house in that case was in

¹ The Council's reference 5/2021/1674

decline, there was no need to refer to Saved Policy 67 of the St Albans District Local Plan Review (1994) (LPR). The Council has not explained why Saved Policy 67 was not referred to in its pre-application advice concerning the appeal scheme.

5. It was wrong for the Council's pre-application advice to fail to refer to Saved Policy 67 of the LPR, as that formed part of the development plan at the time of the advice. I can also see no reason why the Council should not have referred to Saved Policy 67 in The King Offa public house case, although I have not been provided with the full details of that scheme.
6. The development plan and the National Planning Policy Framework (the Framework) do not specify that a marketing exercise should be undertaken to justify the change of use of public houses. However, I have found that where a change of use or redevelopment of buildings used for community purposes is proposed, Saved Policy 67 requires the Council to be satisfied that a need for community facilities no longer exists. One method of demonstrating a need for community facilities no longer exists, alongside a viability assessment, could be a reasonably thorough marketing exercise.
7. The applicant was professionally represented and prior to submitting the appeal was aware that the Council had concluded the proposal would conflict with Saved Policy 67 and the Framework, which were referred to in the Council's officer report and decision notice. The applicant chose to focus on the Council's incorrect pre-application advice in their appeal submissions. I have found the Council was correct to find conflict with the development plan and the Framework in its formal decision, notwithstanding its earlier pre-application advice. I have also found the applicant failed to demonstrate a need for community facilities at the appeal site no longer exists.
8. It was open to the applicant to seek to address the Council's justified reason for refusal as an alternative to submitting the appeal. The appeal was not therefore unavoidable. The Council's refusal of the planning application after identifying conflict with the development plan and the Framework was not unreasonable behaviour. Although the Council failed to provide accurate pre-application advice, that did not directly cause the applicant to incur unnecessary or wasted expense in the appeal process.
9. Based on the information provided, the Council's decision in The King Offa case referred to post dates the submission of the appeal. Although the information provided would suggest the Council has been inconsistent in how it determines some planning applications, the planning permission granted in The King Offa case did not directly cause the applicant to incur unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

L Douglas

INSPECTOR