



Costs Decision

Hearing Held on 11 January 2023

Site visit made on 12 January 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Costs application in relation to Appeal Ref: APP/E2734/W/22/3306214 The Henry Jenkins Inn, Main Street, Kirkby Malzeard 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 Harrogate Borough Council for a full award of costs against Mr David Fielder.
 - The hearing was in connection with an appeal against the refusal of planning permission for the conversion of former Henry Jenkins public house with flat above to dwelling.
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Decision

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

The submissions for Harrogate Borough Council

2. The Council refer to the requirement in section 38(6) of the Planning and Compulsory Purchase Act 2004 that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Council argue that the appellant has failed to correctly consider Policy HP8 of the Harrogate District Local Plan 2014-2035 (the Local Plan) as demonstrated by the summing up at the hearing whereby reference was made to appropriate marketing. However, the policy justification clearly sets out that marketing should be by appropriate agents which means agents specialising in the same use as the application site where they exist alongside local property agents.
3. The Council reference that the policy goes onto explain when considering proposals involving the loss of public houses, applicants will need to demonstrate marketing with agents specialising in licensed premises and local property agents and, where marketing has been unsuccessful, it should then be marketed for alternative community uses.
4. The Council consider that the appellant's failure to undertake the published marketing requirements has resulted in the appeal hearing and this could have been avoided if the policy requirements had been followed. A full award of costs is sought.

The response by Mr David Fielder

5. The appellant considers that the Council in its approach relies entirely on the development plan and did not mention or take into account other material considerations. The Council has criticised the use of the phrase appropriate agents, but the evidence presented demonstrates that the appellant is an

appropriate agent himself, and the Council has not tried to suggest that he is not, nor criticised or commented on the success that the appellant has had with his approach to marketing.

6. Previous Inspectors who considered appeals on the site did not say that the marketing arrangements were unacceptable, just that they were unconventional. The justification to Policy HP8 does not preclude someone with the appellant's experience as being treated as an appropriate agent.
7. In making the application for an award of costs the Council has drawn a clear distinction between marketing for a public house and other community purposes. The appellant did try to clarify the Council's position and this seems to contradict the Council's reason for refusal which indicates that the marketing failure was in respect of other community uses. That is the element that has resulted in the hearing. If that is the case, then it is tantamount to saying that all appeals which seek to dispute a reason for refusal should be liable for an award of costs.
8. The appellant believes that plenty of evidence has been submitted to justify the case at appeal and that the Inspector needs to decide whether the marketing which has been undertaken, in the circumstances where the availability of the premises is well known, including regionally as concluded by the previous Inspector, as well as locally, is satisfactory. Any community use would need to serve the needs of the local community and those matters have been debated at the hearing. The appeal has resulted from the appellant pursuing the right to challenge a decision and any expense to the Council has been normally occurred in the appeal process and there is no unreasonable behaviour.

Reasons

9. The Planning Practice Guidance advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. The marketing of the property by the appellant has been, in part, unconventional but his approach has been shown to be successful with other public houses. Furthermore, the information confirms that he is an experienced and well established owner, manager and selling agent of property, including of public houses.
11. Part of the purpose of marketing is to make those who could be interested in a property aware of its presence so that they can then pursue an interest in the property, if they consider it appropriate. While I have particular concerns with the lack of an independent valuation and that this element does not follow the requirements of the supporting text to Policy HP8 of the Local Plan, in terms of highlighting the availability of the appeal building, it is well known locally and regionally, and has been for some years. In that respect I have concluded that this aspect of the marketing has been sufficient because it has, in practise, raised awareness of the availability of the building as a public house.
12. Given the ten years plus of marketing and the local circumstances where the issues around the building are well known, I am also satisfied that all those who may wish to use the building in some other form of community use would also have been aware of its availability.

13. In these circumstances, that element of the approach to the marketing of the building has been satisfactory, subject to my concerns with the lack of an independent valuation. There has, in the terms of the issues raised by the Council in this costs application, been no unreasonable behaviour and it was certainly not unreasonable to appeal and to make the case that permission should be granted.
14. As a result, it follows that in terms of the issues raised by the Council in the costs claim, I cannot agree that the appellant has acted unreasonably and the appeal could not have been avoided. Accordingly, the Council was not put to unnecessary or wasted expense in the appeal process.

Conclusion

15. 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 and an award of costs is not justified.

David Wyborn

INSPECTOR