



Costs Decision

Site visit made on 9 September 2022

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2023

Costs application in relation to APP/Z0116/W/22/3296352 Bell Hill, Stapleton, Bristol, BS16 1BQ

- 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 Red Rock Developments Ltd against Bristol City Council.
 - The appeal was against the non-determination of an application under Section 78 of the Town and Country Planning Act 1990 (as amended) for 'Change of use from public house (Sui Generis) to mixed use Class F2 (Local Community Uses), Class C3 (retention and extension of existing dwelling) and Class C4 (regularisation of existing shared accommodation)'.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own expenses but 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. The PPG also makes it clear that a local planning authority (LPA) is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
4. The applicant contends that an award of costs is justified on substantive grounds in that the Council was mis-applying Policy DM6 of the Local Plan during the course of the application. This resulted in the applicant appealing against non-determination, as opposed to the application progressing to planning committee.
5. Policy DM6 allows for the loss of existing public house uses where it can be demonstrated that either i) the use is unviable; or ii) a diverse range of public house provision exists within the locality.
6. The wording of Policy DM6 is clear that only one of the two criteria needs to be met for compliance with the policy. This is further reinforced by the pre-application advice that the applicant received and through previous decisions made by the LPA, which the applicant shared with the case officer.
7. I have been provided with email trails between the applicant and the Council's case officer. These indicate that the officer had been intending to take the

application to planning committee with a recommendation for approval. However, following a change in view the case officer instead informed that the application would be recommended for refusal, albeit would be a finely balanced recommendation. An email from the case officer, dated 20 October, indicates that this was due to the proposal not satisfying Policy DM6 (part ii).

8. I note from the email trails that the applicant believed the LPA already were in agreement that the existing public house use was unviable and therefore satisfied Policy DM6 (part i). However, I have not been provided with any correspondence from the LPA (from during the initial application period) that demonstrates it was satisfied that the public house was unviable. The email from the case officer (dated 20 October 2021) highlights that the future of the site as a pub was considered precarious but does not go as far as to indicate that it was viewed as unviable.
9. From the evidence before me, I therefore cannot be entirely satisfied that the Council was mis-applying Policy DM6 in seeking to take the application to planning committee with a recommendation for refusal.
10. I recognise for the appellant it is highly frustrating to be provided with an indication that a proposal is likely to have a positive recommendation, only for the officer's view to change. However, there are a variety of reasons why a change in view may happen and it does not necessarily amount to unreasonable behaviour.
11. I also recognise that the Council has not sought to contest the appeal having subsequently received independent advice in respect of the viability of the existing public house use. However, as will be seen from my appeal decision, based on the evidence before me, I have found that the proposed development conflicts with Policy DM6, which justified dismissal of the appeal.
12. Consequently, even if the Council did initially misinterpret Policy DM6, and thereby exhibited unreasonable behaviour, I do not consider that it has resulted in preventing or delaying development which should clearly be permitted, having regard to the development plan, national policy or any other material considerations.
13. An award for costs is therefore not justified.

Lewis Condé

INSPECTOR