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## Costs Decision

Site visit made on 18 May 2023

**by S Hunt BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 June 2023**

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### **Costs application in relation to Appeal Ref: APP/E2734/W/23/3317660 11 Cambridge Road, Harrogate, North Yorkshire HG1 1AA**

- 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 Nathan Priestley for a partial award of costs against Harrogate Borough Council.
  - The appeal was against the refusal of planning permission for Change of use from commercial / business use (Class E) to a retail/commercial unit (Class E) and 23 No. serviced holiday apartments (Use Class C1) with associated external alterations.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant accepts that the Council have not acted unreasonably in relation to the first reason for refusal (relating to living conditions), but has acted unreasonably in refusing planning permission for the remaining three stated reasons, and therefore seeks a partial award of costs.
4. The applicant submits that the Council has demonstrated unreasonable behaviour summarised as follows:
  - The refusal of the application because of a lack of natural light and ventilation is unfounded because all rooms (including corridors), would be capable of being naturally ventilated and lit through windows or rooflights, therefore the Council's concerns are not substantiated or supported by objective analysis. Furthermore, the approval of ventilation details could have been dealt with by way of a condition, avoiding the need for a reason for refusal on such grounds;
  - The Council's third reason for refusal relating to refusal and recycling storage provision is vague and unsubstantiated because this is a matter to be agreed between the building owner and any future tenant. There is no justifiable basis to support their contention that facilities would have an unacceptable impact on the streetscene or surrounding residents. The Council's belated acknowledgement that such matters

could be controlled by condition has led to the applicant incurring unnecessary costs;

- The Council's consideration of impact on vitality and viability of Harrogate town centre as cited in reason for refusal four is lacking in any robust, detailed analysis against specific development plan requirements and has failed to consider the permitted development rights available, the introduction of the new Use Class E since the adoption of the Harrogate Local Plan, and the advice of their own Economic Section that smaller units may be more affordable for independent retailers; and
  - The applicant has since secured prior approval consent for residential conversion of the building and the genuine fallback position, relating to a scheme which has a clear prospect of being delivered, has not been adequately considered by the Council.
5. The Council responded that they have been consistent, engaging and open to discussing meaningful solutions to the redevelopment of the building, as reflected in the planning history. The reasons for refusal all state relevant development plan policies in accordance with the Framework. The prior approval scheme does not appear to have been implemented to date. The Council have provided appeal decisions and examples of other nearby permissions to back up their approach. The Council considered the applicant's recommended occupancy condition at the time of the application and felt that it would not meet the tests, having considered an appeal decision.
6. It will be seen from my appeal decision that I agreed with the applicant and found the proposed development is in accordance with the development plan. In arriving at this conclusion, I considered that some of the Council's concerns could be overcome by the imposition of planning conditions. In terms of living conditions I found that the effects on future occupiers, who would be short term and transient, would be acceptable. Nonetheless, I agreed with the Council's occupancy condition rather than that of the applicant in terms of the maximum length of a stay and in terms of making the condition enforceable. Whilst ventilation would be limited via rooflights for the internal ground floor apartments, a scheme for provision of further ventilation could be adequately dealt with by condition. In terms of the corridors, there would be natural light to them all to some degree, but artificial lighting would inevitably be required. This is a matter which is difficult to overcome in any apartment building, particularly for a conversion, and as such the Council's reason was not fully substantiated but I do not consider that the appellant would have come to additional or wasted expense in defending this particular reason for refusal.
7. I found that reason for refusal 3 regarding a scheme for provision of waste storage can be satisfactorily dealt with by condition. Nonetheless, the Council's reasons were adequately substantiated, particularly given the location of the site in a Conservation Area.
8. The Council has placed undue reliance on appeal decisions and other schemes which are not necessarily directly relevant. In terms of vitality and viability, the benefits of a smaller unit, as set out by their own Economic Section, were not adequately considered. Furthermore, the relevant policies do not require the applicant to go to the lengths which the Council considers necessary in justifying subdivision of the retail unit, and they failed to properly consider the

permitted development rights available. In terms of the fallback position the prior approval application was determined after the refusal of the application, and in any case it is not a matter which I have found that the appeal turned on. Whilst the reason for refusal was vague, and partly unsubstantiated, I do not consider that the Council were unreasonable in coming to its decision on the proposal before me and the applicant's costs were a necessary part of the appeal.

9. Given the above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in respect of the issues raised by the applicant has not been demonstrated.

*Susan Hunt*

INSPECTOR