The Planning Inspectorate

Costs Decision

Site visit made on 14 April 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 JUNE 2023

Costs application in relation to Appeal Ref: APP/Y2003/W/22/3305713
The Haymaker, 75 Main Street, Bonby, Brigg DN20 0PY

- 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 Keith Simpson for a full award of costs against North Lincolnshire Council.
- The appeal was against the refusal of planning permission for demolition of an existing vacant restaurant and attached owner/occupier flat, and erection of 6 semi-detached family homes.

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. However, the Planning Practice Guidance (PPG) 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. Local planning authorities risk an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.

3. Council officers recommended the application for approval. Whilst elected members are not duty bound to follow officers' recommendations, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.

4. The appellant's claim is that members of the committee relied on the 'purely aspirational' intentions of the Low Villages Pub Group (LVPG) over the additional viability evidence provided with the application that Council officers considered to be sufficient to demonstrate that the public house was economically unviable. It is also argued that the Council has continued to erroneously argue that the site is an Asset of Community Value (ACV), despite the 'protected period' under the ACV process having ended on 31 July 2022.

5. The Council in response states that the offers made by the LVPG 'clearly demonstrates that there is a need for the building to be retained in community use' and that the objections made to the proposal show the Haymaker is 'a valued community facility'. The Council adds that the ACV process allows for further moratorium periods to be triggered should the building be put up for sale again, and thus it remains a relevant material consideration.

6. The evidence before me in respect of the deliberations at the committee meeting is limited to brief summaries of the comments made in the minutes.

These set out in simple terms that those speaking against the proposal pointed to a survey showing 76% of respondents 'wanted the pub to remain in the village' and to a 'great appetite for the retention of the pub and to keep it open'. Although some members referred to the 'overdevelopment' of the site for six dwellings, this did not form part of the subsequent reason for refusal.

7. At appeal, the Council argued that the offers from LVPG showed 'serious interest and a need for the building to be in community use' and it is evident that these submissions were decisive in the Council's view. However, in pursuing this position the Council failed to fully acknowledge the past trading difficulties of the site or explain why it placed significantly more weight on the aspirations of the LVPG, who had not produced any evidence to show it would be capable of running a viable enterprise, over the financial and marketing evidence provided by the appellant as required under Policies CS2 and CS22 to justify the loss of a community facility and which was considered as cogent evidence by planning officers. In this respect, I find that the Council failed to produce evidence to substantiate its reason for refusal and in basing its decision on the submissions of the LVPG, it relied on vague, generalised or inaccurate assertions about the proposal's prospects, which were not only unsupported by any objective analysis, but also ran wholly contrary to the professional comments provided by the appellant's surveyor regarding the trends in the rural pub sector.

8. Moreover, the Council in pointing to the lack of alternative facilities in the village failed to acknowledge that the pub had not traded as such since 2011 and was not a current facility at risk of closure, but a long shuttered business which did not have sufficient local support when it was open to remain viable. The Council's policies do not require the retention of a particular community facility, i.e. a public house, on the basis that there are no others of that specific kind in the village. The Council has therefore sought to apply a test which is not set out in policy.

9. The Council also argues that because policies CS2 and CS22 are consistent with the National Planning Policy Framework (the Framework), the tilted balance of Paragraph 11 is not engaged. However, the Council's acknowledged lack of a five year supply of deliverable housing sites means that the tilted balance is engaged regardless of whether these policies are up-to-date or not. The planning balance conducted at Paragraph 6.1 of its Statement of Case is not conducted in accordance with the wording of Paragraph 11(d)(ii) of the Framework. As such, it is unclear that the Council, either at application stage through its planning committee or at appeal stage, fully acknowledged the implications of Paragraph 11 of the Framework in reaching its decision and later making its case.

10. In respect of the weight given to the ACV designation, I am satisfied that the evidence put to me by the Council was not intentionally misleading, and both parties have provided clarifying comments on the ACV process which I have had regard to. As such, I do not find unreasonable behaviour on this point.

11. However, for the reasons set out, I find that the Council at appeal has failed to fully consider relevant material considerations, including the appellant's financial and market evidence, its acknowledged housing supply shortfall and the Framework, instead basing its position on the aspirational aims of the LVPG which were not supported by cogent evidence that a viable new community use

could be sustained. Consequently, the Council has failed to substantiate its reason for refusal. This amounts to unreasonable behaviour as set out in the PPG and it follows that the appellant has been put to the unnecessary expense of making the appeal.

12. 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

13. In 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 North Lincolnshire Council shall pay to Mr Keith Simpson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to the 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.

K Savage

INSPECTOR