



Costs Decision

Hearing held on 27 June 2023

Site visit made on 27 June 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 August 2023

Costs application in relation to Appeal Ref: APP/W1145/W/22/3312735 The Laurels Inn, Petrockstowe EX20 3HJ

- 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 Torridge District Council for a full award of costs against Mr & Mrs Johnson.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use from a mixed use of public house and private dwelling to solely a private dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for the Council

2. These were made in writing at the Hearing.

The response on behalf of the appellants

3. This was made in writing at the Hearing.

Reasons

4. Planning Practice Guidance (PPG) tells us that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Such unreasonable behaviour may be procedural, relating to the appeal process, or they may be substantive relating to the issues arising from the merits of the case presented.
5. The PPG tells us that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
6. The central part of the Council's application for an award of costs is that the appellant has approached Policy ST22(3) and the associated explanatory text in an unreasonable way. The suggestion made by the appellant is that the Council's reliance on the explanatory text is unlawful.

7. In my parallel appeal decision, I have set out my views on the relationship between Policy ST22(3) and the explanatory text. I have found that the explanatory text, in particular paragraphs 8.9 and 8.10, explain how an assessment under the terms of Policy ST22(3) should take place. In that way they function in the way explanatory text is intended, and cannot be simply set aside. That said, I have not dwelt on the fact that the evidence put forward on behalf of the appellant does not strictly comply with the requirements of paragraphs 8.9 and 8.10, and neither, in fairness, has the Council.
8. The problem with the evidence that has been put forward is more fundamental than that. First, the submitted accounts do not demonstrate a business that is not viable, but a business that is not as profitable as the appellants would like. Second, the marketing that has taken place is fraught with contradictions.
9. I am told that the business was not viable based on the accounts, but someone was prepared to offer close to £400,000 for it, pre-pandemic; a figure way above the £269,000 paid by the appellants in 2017. That suggests that the business was seen as viable, or potentially viable, at that time and the fact that the sale fell through because of the pandemic is neither here nor there. Further, if the business was performing so poorly that it needed to be closed in September 2021, why is it on the market currently at £450,000?
10. Policy ST22(3)(a) requires compelling evidence to demonstrate that the existing use is no longer commercially viable or could not be made commercially viable. The difficulty with the case advanced on behalf of the appellants is not the Council's purported reliance on the explanatory text to Policy ST22(3), but the nature of the evidence that has been advanced by the appellants. It is anything but compelling. On top of that, no cogent attempt has been made to justify the proposed change of use under Policy ST22(3)(b).
11. In that overall context, it appears to me that the case advanced in relation to the development plan was doomed to fail. That is not the end of the matter though; it might be that there are material considerations that might point to a decision taken contrary to the provisions of the development plan.
12. Those that were advanced relied on arguments that the public house has closed, and that the appellants cannot be compelled to re-open it. That much is true, but the argument goes nowhere because it is the potential for the public house to re-open that I am concerned with.
13. Similarly, I appreciate that there is nothing to prevent the appellants from continuing to live in the property. Again though, that is missing the point because if the balance between the residential element of the use and the public house element tips too far towards the former, the Council could take enforcement action against the change of use that would entail, in order to protect the potential for the public house to operate once again.
14. All in all, I agree with the Council that the appeal had no reasonable prospect of success. The proposal is very clearly contrary to Policy ST22(3), and no material considerations have been advanced that come anywhere near pointing towards a decision contrary to the development plan.
15. As such, 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

16. 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 Mr & Mrs Johnson shall pay to Torridge District Council, 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.
17. The applicant is now invited to submit to Mr & Mrs Johnson, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Griffiths

INSPECTOR