
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 for Communities and Local Government

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 Mr & Mrs Johnson for a full award of costs against Torridge District Council.
 - 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 refused.

The submissions for the appellants

2. These were made in advance of the Hearing.

The response by the Council

3. This was made in writing at the Hearing.

The response by the appellants

4. This was made in writing at the Hearing.

Reasons

5. 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.
6. A number of points are raised by the appellant that are said to constitute unreasonable behaviour by the Council. The first relates to the Council's purported reliance on the supporting text to Policy ST22(3) rather than the policy itself, an approach that is said to have been unlawful. As can be seen from my parallel decision on the appeal I do not consider the way in which the Council used the supporting text to Policy ST22(3) to have been unreasonable, or indeed unlawful. In fact, I have used the supporting text in the same way that the Council has - to inform and explain the application of the policy itself. That is after all the purpose of explanatory text.

7. There seems to be a suggestion too that the Council was unreasonable in not accepting the submitted accounts as the 'compelling evidence' required by Policy ST22(3). I do not accept that the Council was unreasonable in this regard. The policy requires 'compelling evidence to demonstrate that the existing use is no longer commercially viable or could not be made commercially viable'. As I have set out in my parallel appeal decision, the accounts submitted do not demonstrate that.
8. Linked to that, there is also an argument that the Council applied Policy ST22 in an unreasonable way because the public house is currently closed – the suggestion being that something that is not operational cannot be lost. However, that is to misunderstand the purpose of the policy. It protects not only community services and facilities, but also their potential. The fact that the public house is currently closed is a matter of little consequence in that regard. Indeed, it would be difficult to see the purpose of Policy ST22 if its requirements could be circumvented by the simple device of closing the community service or facility in question.
9. I accept that the appellants are under no obligation to re-open the public house and can continue to live in the premises. It is suggested that the Council was unreasonable in failing to take this properly into account. Again though, that rests on a misinterpretation of Policy ST22. The policy protects the public house element of what is accepted to be a mixed use of public house and private dwelling at the premises. The residential element could not absorb the public house element without the need for planning permission and the Council could take enforcement action if it felt that the balance between the residential and public house elements was tipping too far towards the residential element. The Council has not approached this matter in an unreasonable way.
10. The Council refused the initial application for two reasons. The second reason, relating to matters of design, and the provision of 'private amenity space' was withdrawn early in the appeal process because the Council considered that the matter could be dealt with through an appropriately worded condition. I do not regard that as unreasonable behaviour; on the contrary it demonstrates that the Council has thought critically about its position in order to ensure that unnecessary or wasted expense in the appeal process was avoided.
11. Points have been raised too about potentially malicious, defamatory, or even libellous comments about the appellants that are said to have been published on the Council's website and reproduced and disseminated since. This is said to have been unreasonable, but it is not for me to judge whether the correspondence referred to meets those definitions. If the appellants wish to take that matter further, it is not something that the planning process is equipped to deal with. The question for me is whether these comments have led to unnecessary or wasted expense in the appeal process. They have not.
12. Bringing all those points together, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul Griffiths

INSPECTOR