



Costs Decision

Site visit made on 4 July 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Costs application in relation to Appeal A Ref: APP/H1705/W/22/3312572 The Red House Inn, 21 & 23 London Street, WHITCHURCH, RG28 7LH

- 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 Nitramic Property Ltd for a full award of costs against Basingstoke and Deane Borough Council.
 - The appeal was against the refusal of planning permission for change of use of existing building from public house, restaurant and residential accommodation to two houses, associated internal alterations, car parking and landscaping.
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Costs application in relation to Appeal B Ref: APP/H1705/Y/22/3312081 The Red House Inn, 21 & 23 London Street, WHITCHURCH, RG28 7LH

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Nitramic Property Ltd for a full award of costs against Basingstoke and Deane Borough Council.
 - The appeal was against the refusal of listed building consent for change of use of existing building from public house, restaurant and residential accommodation to two houses, associated internal alterations, car parking and landscaping.
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Decision – Application in relation to Appeal A

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

Decision – Application in relation to Appeal B

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

Reasons – Application in relation to Appeal A

3. 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.
4. The applicant submits that the Council's decisions were not based on any sound evidence and the refusal was therefore unreasonable. The planning application was refused contrary to the officer recommendation. At a later date the listed building application was also refused, but this decision accorded with the officer recommendation.
5. The Council's officer report for the planning application considered the proposal at length. The views expressed at the committee meeting that an unattached free house was regarded as an interesting opportunity for somebody with the appropriate skills to make a success and an asset to its local community were

made in the light of clear evidence that the marketing exercise carried out over a long period had generated little interest.

6. Additionally, the minutes of the meeting suggest that the desktop viability study was not comprehensive enough. In its statement the Council refers to information that the applicant would be expected to provide to show what measures have been taken in order to attempt to return the pub to a viable business. However, within its committee report, the Council notes that the applicant sets out details of a range of initiatives and promotions within the owner's report that were trialled to improve the business. It is therefore unclear why the lack of such evidence is referred to by the Council in its appeal statement when it has acknowledged elsewhere that this evidence is available.
7. Whilst the application for planning permission was refused on planning grounds in the context of considerable local opposition, I am not satisfied that the decision was made reasonably based on the evidence that was available to Councillors. In making its decision there is no evidence to suggest that the Council considered the loss of the pub in the context of the evidence relating to alternative provision in the town, the attempts to improve the business or the robust marketing exercise that was carried out. I therefore find that the Council's decision to refuse the planning application was unreasonable.
8. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicant. The applicant has incurred unnecessary and wasted expense by lodging an appeal against a refusal that should have reasonably been permitted. 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 in relation to Appeal A is justified.

Reasons – Application in relation to Appeal B

9. The listed building refusal followed the refusal of planning permission at a subsequent committee meeting. The applicant submits that the listed building consent was only refused because the planning application had been refused.
10. The refusal reason stated that the Council considered the works to be unviable because there was no planning basis for the residential use of the building following the refusal of planning permission. Had this been the sole reason for refusal it would constitute unreasonable behaviour on the part of the Council, as it followed a planning decision that was also made unreasonably. However, the listed building application was also refused for other reasons. This included the cessation of the pub use which the Council suggests contributes to its historic interest, and the reduction in public access to the building as a result of the change of use.
11. Therefore, even if planning permission for the change of use had been granted by the Council, it does not automatically follow that the Council would have granted listed building consent. It may have still refused it for the other reasons it gave and, given the different legislative framework by which the decision was made, this would not necessarily have been unreasonable. In my decision I gave little weight to the matters the Council raised in this respect and found that they were easily outweighed by the public benefits of the proposal. However, there is nothing before me to suggest that it was

unreasonable for the Council to include these other matters within its refusal reason.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in respect of Application B.

Costs Order – Application in relation to Appeal A

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 Basingstoke and Deane Borough Council shall pay to Nitramic Property Ltd, 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 Basingstoke and Deane Borough 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.

A Tucker

INSPECTOR