



Costs Decisions

Site visit made on 24 July 2023

by I A Dyer BSc (Eng) FIHT

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Costs application A in relation to Appeal Ref: APP/J1535/W/23/3318533 Cock And Magpie Public House, Epping Road, Epping Green, Epping CM16 6PU

- 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 Epping Forest District Council for a partial award of costs against Antellas Developments Ltd.
 - The appeal was against the refusal of outline planning permission for the demolition of an obsolete former Public House, change of use of land and re-development to provide x 8 no. new dwelling houses, including ancillary works.
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Costs application B in relation to Appeal Ref: Appeal Ref: APP/J1535/W/23/3318533 Cock And Magpie Public House, Epping Road, Epping Green, Epping CM16 6PU

- 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 Antellas Developments Ltd for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of outline planning permission for the demolition of an obsolete former Public House, change of use of land and re-development to provide x 8 no. new dwelling houses, including ancillary works.
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Decisions

Costs application A

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

Costs application B

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

Reasons

3. The Planning Practice Guidance 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.

Costs Application A

4. The Council are seeking an award of costs against the appellants as they consider that they have acted unreasonably in that they did not co-operate

with the Council to provide information at both the application stage and during the appeal in regard to the marketing of the public house.

5. During their consideration of the application, in agreement with the appellant, the Council engaged the services of a consultant, BPS. The parties agreed that the costs of this review would be paid by the appellants and payment was subsequently made.
6. BPS, referring to a marketing report dated November 2020, subsequently requested an update on the marketing carried out. The appellants had, in support of the application, provided an updated marketing report in November 2021. No additional information in such regard was provided in response to the request from BPS. Thus, all of the information upon which the Council based its decision was already available to them, although there is dispute as to whether BPS saw all of the information submitted with the planning application at the time of their report prior to the Council's decision.
7. As no additional information has been provided beyond that already submitted and payment for the services of BPS already made, I find that no additional cost has fallen on the Council in reviewing such. I do not find that the Appellant has withheld information unreasonably and, therefore, the Council has incurred no delay or additional expense from waiting for information.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Application B

9. The appellants are seeking an award of costs against the Local Planning Authority as they consider that the Council have not shown any reasonable basis for refusing planning permission.
10. Whilst the parties subsequently resolved the matters upon which the Council refused planning permission, this was on the basis of information and correspondence that was received as part of the appeal. This included information from Savills that was sufficient to convince the Council that there was little realistic likelihood of the public house reopening as a viable business. Whilst there remained doubt regarding the adequacy of the marketing procedure, in the absence of the building reopening as a public house the Council decided that it was no longer reasonable to pursue the matter of marketing procedure.
11. I note that there is doubt regarding whether, or not, the Council's consultant had seen all of the marketing reports from the appellant at the time of its decision. However, those reports were not the total basis for the Council's opposition to the proposal.
12. Thus, the Council withdrew their opposition to the proposal on the basis of information submitted at appeal, rather than at application stage.
13. The matter of contributions to mitigate the effect of the proposal on the Epping Forest Special Area of Conservation could have been resolved in advance by payment of mitigation during the application process. However, it is not unreasonable of the Council to have determined whether the proposal was acceptable in principle prior to securing payment.

14. Bringing these matters together, I am satisfied that, at the time of the determination of the application the Council did not have the information available upon which their later acceptance of the proposal was based, and so the appeal could not have been avoided. The appellants have therefore not incurred unnecessary or wasted expense in preparing their case in an unnecessary appeal.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

I A Dyer

INSPECTOR