Costs Decision

No site visit made

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 29th May 2026

Costs application in relation to Appeal Ref: APP/X1355/W/25/3375121
The Bridge Inn, Whorlton, Barnard Castle DL12 8XD

- 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 Geo A Carter Ltd for a full award of costs against Durham County Council.
- The appeal was against the refusal of planning permission for change of use from public house to 1no residential dwelling and erection of gate.

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, Paragraph 030[1] of PPG advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 051[2] of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.

3. The applicant submitted an application for the conversion of a public house (the Inn) to a dwelling. The application was refused on the grounds that it had not been demonstrated that the Inn was no longer viable or that all avenues leading to its retention had been explored.

4. The applicant advances the argument that the Council failed to have proper regard to material information, based its decisions on factual errors and failed to provide proper and adequate reasoning for its decision to refuse the application.

Policy Test for viability

5. Policy 6 g) of the County Durham Plan (CDP) states with regard to development on unallocated sites that applications will be permitted *provided the proposal….does not result in the loss of a settlement's …valued facilities or services unless it has been demonstrated that they are no longer viable.* The accompanying text states in paragraph 4.112 that *to demonstrate that a facility is not viable the applicants must be able to evidence that the premises has been advertised as a going concern in the press, online and on-site at least four times within a six month period and all*

[1] Reference ID: 16-030-20140306
[2] Reference ID: 16-051-20140306

reasonable offers have been explored. Notwithstanding that this paragraph appears to apply only to Assets of Community Value (ACV) and is silent with regard to assets which are not ACV, the Council's response to the costs application states that appropriate marketing was undertaken. Moreover, the Council did not dispute the valuations used to inform the marketing.

6. Nonetheless, although the policy test is clear, and the Council confirms that the test was met, the officer report states that *it has not been demonstrated that the public house is not viable nor that all avenues leading to its retention have been explored* and has found conflict with this policy, as well as with Policy WP6 of the Neighbourhood Plan. This states only that *existing amenities will be protected and any proposals resulting in the loss of them shall be resisted, exploring all avenues leading to their retention.* There is no clear test for viability set out.

7. The Council has elected to give weight to other considerations, primarily an apparent lack of effort to implement the business model set out in the 2019 Viability Report (2019 VR) and the closure of the nearby bridge. The 2019 VR related to an application to allow the conversion of an annexe and outlined a hypothetical scenario to improve profitability through reducing costs or substantially increasing sales, and that there could be a small level of visitor accommodation. The officer report for that application concluded that the business plan was broadly sound.

8. The officer report also notes that at the time of the 2019 application, the Inn was an ACV, which was a material planning consideration. However, the officer report concludes the reasoning by stating that it was crucial that the manager/owner accommodation remained available to ensure long-term viability and this would be secured by condition. This suggests that the Council had no expectation that the Inn would provide visitor accommodation and that it was not determinative when granting permission for the conversion. In any case a review of the floor plans indicates that such use would result in quite cramped living conditions for a tenant and family.

9. Moreover, the 2024 Viability Report (2024 VR) makes it clear that providing visitor accommodation could have resulted in additional costs for the landlord who would have had to rent a house locally for their own accommodation, as letting rooms would have reduced their own living accommodation. The 2024 VR also raises concerns in relation to layout, as there was insufficient separation between the lettable rooms and the landlord's accommodation. Moreover, the rooms are located above the main dining room and in 2019 the Council raised concerns in relation to residential amenity. The Council claims that the lack of provision of visitor accommodation since 2020 should weigh heavily against the current application. However, as far as I can see the provision of visitor accommodation was not a determinative factor in the granting of the previous permission. As such, the Council has relied on inaccurate information in its refusal of permission for this application.

10. The Council also advances the argument that *other diversification options have not been explored.* However, the 2024 Viability Report (2024 VR) outlines the range of food offered by the last tenant and states that there are highly positive reviews on social media. The report contains menus include traditional main courses such as steak, sea bass, and pasta as well as lighter options including burgers, baked potatoes and sandwiches. There was also a specials board, Sunday lunch menus and vegetarian options, as well as more exotic fare. Yet the officer report concludes

that as it appears there were no special offers or events on certain evenings, options to improve viability were not undertaken. However, it seems highly unlikely that any tenant would not pursue options to increase revenue. Moreover, it is also clear from the evidence, including floor plans, that floor space is limited and is already fully utilised by the wet sales and food offerings. The 2024 VR concludes that there is little opportunity for further diversification. Whilst I appreciate that the Council can exercise planning judgement, there appears to be no basis upon which to conclude that a different food offering might improve viability. In any case, as I have set out my decision, the 2019 VR carries no weight in the determination of this appeal, as there is no enforcement mechanism for those hypothetical scenarios. This application should be determined on its own planning merits. Moreover, the Inn is no longer an ACV. In any case, the test for viability, as set out in the policy text, is not conditional upon community value.

11. Furthermore, with regard to the bridge, the last tenant was in place during the period that the bridge has been closed. I have set out in my decision that it cannot be concluded with any certainty from the evidence that the closure of Whorlton Bridge is currently a material factor in the difficulty of retaining and attracting tenants.

Material considerations

12. Page 3 of the Council's costs response cites the policy text of CDP Policy 6 g). However, the sentence *the number of objections received can help to establish the value of the facility or service in question* is not in the policy text. Moreover, this sentence sets out an intent to establish community value. The number of objections, or indeed assessing the value of a community facility, is not a viability test. It appears to me that the Council has conflated community value and viability in its application of its policies. That a functioning and profitable public house would have social and community value, is not in dispute.

13. The accompanying text to CDP Policy 6 notes that marketing evidence will be considered on a case by case basis. My reading of this is that the case by case approach applies to the conclusions to be drawn from the marketing procedure. Although the Council accepts that the appellant has met the policy tests for viability, it has then used the case by case approach to justify refusing permission for the development on the basis that the loss of a community facility should carry more weight. However, this is not set out in the policy text and in any case, this approach makes very little economic sense.

14. Page 4 of the Council's costs response states that as there has only been one tenant since the closure of the bridge, it cannot be concluded that the Inn is not viable. Leaving aside the lack of supporting evidence, the number of tenants over a period of time is not the test of viability set out in the policy. In any case, it remains that the Council agrees, on Page 6 of the costs response, that the applicant has met the viability test set out in the relevant policy. Were there other options that remain unexplored, the marketing exercises would have been successful. As such, it is unclear to me how a business that has shown itself to be unviable using the Council's own policy test, can be expected to continue to provide any form of community facility. The applicant is not obliged to run a business at a loss to safeguard that community facility.

15. I agree that the decision maker does not have to accept the views of internal consultees. However, the Council has not disputed the appellant's valuations, acquired from suitably qualified professionals. If advertising at a market price fails to generate interest it is difficult to see how else the applicant can show that the business is not viable. I am not aware of anything in the local development plan or the National Planning Policy Framework that indicates that a private business's social or community value should override financial viability in decision making.

16. The Council has failed to follow its own policy tests, and its reasoning with regard to the refusal of this application is contradictory and confused. It has given weight to material considerations which are either irrelevant, inaccurate or unsupported by any firm evidence, and has failed to give weight to evidence which does not support what appears to be its favoured outcome, namely that the application should be refused. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

17. 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 Durham County Council shall pay to Geo A Carter 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.

18. The applicant is now invited to submit to Durham County 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 Edgington

INSPECTOR