



Costs Decision

Hearing held on 4 February 2025

Site visit made on 4 February 2025

by **G Bayliss BA (Hons) MA MA MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 03 March 2025

Costs application in relation to Appeal Ref: APP/W3520/W/24/3346173

The Angel, 5 High Street, Debenham, Stowmarket IP14 6QL

- 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 Mrs Stacey Paine for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period for an application of planning permission for the change of use from drinking establishment (Sui Generis) to dwelling house (C3).
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Decision

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

Preliminary Matters

2. 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.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The guidance encourages authorities, amongst other things, to properly exercise their development management responsibilities, and rely only on reasons for refusal which stand up to scrutiny based on the planning merits of the case.
4. A verbal costs application was made on behalf of the applicant during the hearing. The Council was given the opportunity to respond to the application.

Costs application by Mrs Stacey Paine

5. The applicant is seeking a full award of costs against the Council, stating that it has behaved unreasonably resulting in unnecessary delay and expense in undertaking the appeal. It is argued that the application should have been permitted having regard to the development plan policies, national policy and other material considerations. The applicant's case is summarised as follows:
6. The property has been marketed for the prescribed period at a reasonable price. Furthermore, the Council has granted planning permission for a new public house opposite and the village now has two pubs to serve the community. The harm to

- the significance of the heritage asset arising from the change of use would be less than substantial and that this would be outweighed by the public benefit of securing a viable use for the building and ensuring its repair.
7. Flooding should not have been a putative reason for refusal as the National Planning Policy Framework (the Framework) advises that the change of use is exempt from the sequential test, and both uses fall within the 'More vulnerable' class. Furthermore, in the event of flooding, residents could exit via the access in Flood Zone 1, and flood resilience measures could be subject to a condition.
 8. The Council asked for an extension of time due to the election when Local Government Association (LGA) guidance stated that they should continue to determine applications. It therefore should have determined the application within the prescribed timeframe. The Council was also too late in requesting access to the property to assist with a viability report.
 9. The Council failed to work with the appellant towards a positive outcome for the building including not responding to communications and it refused to enter into the statement of common ground process. For these reasons, if the Council had regard to all considerations, it would have permitted the application in good time and the appeal would have been avoided. Consequently, it is argued that a full award of costs is justified.

Response by the Council

10. A verbal response was given by the planning officer, summarised as follows:
11. The case is made that many of the matters raised in the costs application are issues dealt with in the Council's putative reasons for refusal and have been addressed.
12. The Council highlight that the building may have been marketed for the prescribed period, but the policies are specific as to the details that first need to be submitted and approved by the Council. This does not appear to have been done. Although the sale price may have appeared reasonable, both the previous Inspector's comments and the Parish Council valuation were some time ago and circumstances have changed. It was, therefore, not unreasonable to question this.
13. The village has other pubs, but this does not justify a loss of further facilities, and there is insufficient evidence that the community has no capacity to re-open the premises or for it to become another community facility or employment premises.
14. The public benefits have been addressed in the Council's putative reasons for refusal. In relation to flooding, the matter primarily fell away due to the changes in The Framework, which occurred after the Council's decision.
15. Whilst the Council regrets that it did not appear to respond to some of the appellant's more recent approaches, discussions had been taking place for some time. Had the appellant followed the advice in the policies, communication would have been easier, and the process would have been more structured. In all these circumstances, the Council considers that it has acted reasonably, has defended its putative reasons for refusal, and if it had determined the application, it would have been refused. There has, it is argued, been no unreasonable behaviour in the appeal process.

Reasons

16. The Council's putative reasons for refusal in relation to viability and heritage impact are matters of judgement and it was reasonable for the Council to conclude differently in relation to compliance with the development plan, the Framework and material considerations. This was addressed in the Council's appeal statement and these matters have been considered in my decision. I have concluded that the marketing did not accord with the Council's policies, that the valuation figure was still in dispute, and the presence of other public houses in the village did not demonstrate a lack of community need. In relation to heritage, it was also necessary to consider the harm arising to the heritage assets against the public benefits. It was therefore not unreasonable to explore these matters of judgement through the appeal.
17. In relation to the Council's putative reason for refusal on flooding, this was raised due to the use proposed which was different, in part, to the previous application. It also required further assessment due to the revisions to the Framework which occurred after the Council had issued its appeal statement. This matter was necessarily addressed at the appeal and the Council therefore acted reasonably regarding its earlier considerations and agreed at the hearing on this matter, thereby narrowing the issues in contention.
18. The Council appeared slow to consider the application and there is evidence that the appellant repeatedly approached the Council for advice and updates. However, the correspondence submitted does not demonstrate to me that the Council was ignoring these approaches or was not being helpful. The email correspondence shows that some late representations had been received, including from the Parish Council, and it was appropriate for the Council to adequately consider these before making a decision. The LGA guidance appears to be advice only, and the Council explained to the applicant its reasons to request an extension of time due to the election as the application was perceived as being very contentious.
19. The future of the Angel Inn as a public house has been in the balance for some time with evidence of protracted discussions between the appellant and the Council. It is within the Council's gift to refuse an application if it considers a scheme not to be policy compliant, where the issues are considered to be insurmountable, and/or where they consider that no reasonable amendments or conditions could have been imposed to make the development acceptable. Indeed, following my consideration of the appeal on its merits alone, I have concurred with the overall findings of the Council.
20. It would have been helpful for the Council to comment on the more recent round of marketing and the viability study, but I recognise that a lack of compliance with the newly adopted policies may have meant that this was considered unnecessary. There also appeared to be access difficulties in trying to carry out this assessment. Whilst it appears that the Council was seeking access to the property rather late in the day, this would still have enabled the Council to assess the appellant's submitted information and to provide feedback.
21. Not agreeing to a Statement of Common Ground is listed in the PPG as a possible example of unreasonable behaviour. However, the PPG is clear that in order for an award of costs to be warranted, the unreasonable behaviour must have resulted in unnecessary or wasted expense in the appeal process. Whilst it may have been

unreasonable for the Council not to enter into these discussions, most of the issues had previously been explored through the earlier appeal, and there is no adequate evidence to demonstrate that this led to unnecessary or wasted expense in the appeal process.

22. Accordingly, whilst I appreciate that the outcome of the appeal will have been a disappointment to the appellant, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its actions. The appellant had to address those concerns in any event.
23. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

G Bayliss

INSPECTOR