



Costs Decision

Hearing Held on 12 December 2023

Site visit made on 13 December 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Costs application in relation to Appeal Ref: APP/J3015/W/23/3317327 Gardeners Inn, Awsworth Lane, Cossall, Nottingham NG16 2RZ

- 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 Matt Eley (NG9 Properties Ltd) for a full award of costs against Broxtowe Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing public house and to construct 5 no. detached dwellings and associated parking.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. Council officers recommended the application for approval. Elected members are not duty bound to follow officers' recommendations, but if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
4. The applicant's claim, in short, is that the Council's planning committee was influenced by the business plan presented by the Friends of the Gardeners Inn (FTGI) at the second committee meeting in December 2022, and it was unreasonable to rely upon what was a flawed document in refusing the application, particularly as it had not been made available to the applicant beforehand. The claim further alleges that the Council's reason for refusal refers to whether there is alternative provision in the area, which ignored the evidence to the contrary presented by the applicant.
5. The Council in response states that the planning committee is a democratic body and can overturn an officer recommendation where members feel the application fails to accord with development plan policy. The decision notice clearly sets out the reason for refusal, namely that the evidence had not demonstrated that it was a necessary loss of a community facility, contrary to the development plan and National Planning Policy Framework. The Council disputes that the reason for refusal was solely based on whether alternative

- provision was available. It also points out that the Council did not have control over the submission of a business plan by the FTGI at the committee meeting and that it was a material consideration to which the committee was legally bound to have regard in making its decision. The Council adds that it sought to work with the applicant during the application period until material considerations pointed to refusal.
6. In final comments, the applicant states that the business plan was determinative as officers had recommended approval and were clearly happy that the 'appropriateness' test had been met. The applicant was unable to have sight of the business plan until the appeal stage, when it found that its figures did not withstand scrutiny.
 7. As set out in my main decision, the main issue related to the loss of a community facility and encompassed several matters, including the site history, its value to the local community, the question of viability and future prospects and the availability of alternatives. I am satisfied that the Council's reason for refusal was framed in such a way as to include all of these matters and was not focused solely on whether there was suitable alternative provision, such words not appearing directly on the decision notice.
 8. The Council's case at appeal was not solely predicated on the presence of a business plan from the FTGI, but also pointed to the lack of specific evidence from the applicant relating to the viability of the public house, in particular a lack of marketing. Whilst I agreed with the applicant that the FTGI business plan was not fully formed, it nevertheless formed a material consideration indicating real interest in maintaining the public house as a community facility and which could still come to fruition. The applicant did not provide robust competing evidence of a lack of interest from marketing or the non-viability of the business through financial details or other data sources, with rebuttals of the business plan at the hearing being anecdotal in nature.
 9. I can understand the applicant's frustration with the outcome of the planning committee having received a favourable recommendation. Concerns with the actions of the committee are generally matters for local government accountability. However, the applicant has subsequently had an opportunity to rebut the business plan of the FTGI at the appeal stage, in addition to addressing the other concerns raised by the Council. Ultimately, the weight to be apportioned to the relevant factors forming the main issue of the appeal is a matter of planning judgement for the decision maker. Having considered all of the evidence before me, including the availability of alternative facilities, in my planning judgement the applicant did not demonstrate sufficiently that there is no longer a need for the public house. Therefore, I find that the Council has substantiated its position at appeal, and its refusal of the application did not prevent or delay development that should reasonably have been permitted.
 10. For these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Therefore, an award of costs is not justified and no award is made.

K Savage

INSPECTOR