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## Costs Decision

Site visit made on 27 March 2018

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 May 2018**

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### **Costs application in relation to Appeal Ref: APP/X1925/W/17/3188915 Maiden's Head Public House, 67 High Street, Whitwell, Hertfordshire SG4 8AH**

- 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 S Coleman (Haut Limited) for a full award of costs against North Hertfordshire District Council.
  - The appeal was against the refusal of planning permission for change of use of the Maiden's Head Public House from Class A4 (Drinking Establishment) to use as a single dwelling house Class C3 (Dwelling House); ground floor rear extension, demolition of modern rear extension, shed and front porch, consequential internal and external alterations to facilitate change of use and refurbishment of building.
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### **Decision**

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

### **Reasons**

2. 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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
3. Whilst it is quite acceptable to have determined the application contrary to its officer's advice, the failure to produce evidence to substantiate its reason for refusal indicates quite clearly the Council had behaved unreasonably in a substantive sense.
4. The first part of the Council's reason for refusal had stated that the proposal would not promote the retention of an important local facility. The harm caused as a consequence is not then addressed in the decision. The second part of the decision relates to the assertion that the applicant's evidence on sustaining a viable business had not be demonstrated to the Council's satisfaction. The Council had included this as a reason for refusal without having considered the details of the independent viability report that its officers had required the applicant to fund.
5. The Committee minutes reveal that the possibility of deferring a decision until such time as the various viability reports had been read and digested was considered. The Committee members had been advised that there was no guarantee they would be able to see the full, un-redacted reports due to

- commercial sensitivity grounds. Without having first ascertained whether this was indeed the case the Committee made its decision on the basis that, as a consequence of the possibility of not being able to see the un-redacted reports, the applicant's viability evidence had not be satisfactorily demonstrated.
6. The Council has not responded to the costs application and therefore I have no reason not to fully accept the case made that there was no reason the members could not have secured access to all the viability evidence prior to reaching a decision. Therefore the Council made its decision based purely on the evidence presented by opponents to the scheme.
  7. Moreover, the final part of the Council's reason for refusal relates to the conflict with paragraph 28 of the National Planning Policy Framework. Quite apart from this paragraph making no reference to viability, the decision itself, and the lack of any subsequent appeal statement, fails to address why the decision relies on the Framework and not upon the Council's emerging local plan policy which the officer's report had made clear reference to.
  8. Paragraph 49 of the PPG provides examples of the types of behaviour which may give rise to a substantive award against a local planning authority. The failure to produce evidence to substantiate each reason for refusal on appeal is given as one example. It is on this basis that I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. I acknowledge the Council would have had genuine concerns over the loss of an important local facility, resulting from the change of use of the Maiden's Head Public House. However, for the above reasons, I must nonetheless conclude that a full award of costs is justified.

### **Costs Order**

9. 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 North Hertfordshire District Council shall pay to Mr S Coleman (Haut Limited) the costs of the appeal proceedings described in the heading of this award; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council, to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

*Jonathan Price*

INSPECTOR