

Costs Decision

Site visit made on 5 December 2016

by Terry G Phillimore MA MCD MRTPI

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

Decision date: 18 January 2017

**Costs application in relation to Appeal Ref: APP/X1545/W/16/3153893
All Saints Church of England Primary School, London Road, Maldon
CM9 6HE**

- 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 Chelmsford Diocesan Board of Finance for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for conversion of former All Saints CE Primary School to 8 residential units, associated amenity space and parking.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The planning application that led to the appeal was a revised version of a previously refused scheme. It responded to pre-application advice and received the support of planning officers. However, the Council's Planning Committee was not bound to follow their recommendation, and that it did not do so does not in itself amount to unreasonable behaviour if the decision could be justified as soundly based.
 4. The refusal was on a single ground relating to the living conditions that would exist for future residents of the development with regard to amenity space provision. I have addressed this as the issue in dispute in my Appeal Decision. I reach the conclusion that appropriate amenity space would be provided, and that the development plan is complied with.
 5. In reaching this conclusion I deal with the Council's argument that the requirement of policy H8 of the Maldon District Replacement Plan 2005 is not applicable since the proposed units do not comprise flats. While I find that the standard the policy contains is nevertheless of assistance, the Council appears technically to have a sound point based on the relevant definition of a flat. I also make reference to the Council's reliance on a garden space requirement derived from the Essex Design Guide. The appellant calculates that a strict application of this would substantially limit the number of units that could be
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provided in the conversion of the building. However, it seems to me that the Council makes use of the standard as a comparison to inform an assessment of the proposed level of provision rather than seeking to apply it in a deterministic way. In this respect I am not persuaded that there is no scope for some reconfiguration of layout that could provide a higher ratio of private amenity space within a conversion scheme.

6. The Council in its appeal representations explicitly states that whether the amount of space is acceptable as currently proposed is a matter of judgment. I agree. I find the proposed provision in the appeal scheme to strike a satisfactory balance between heritage objectives (having regard to the agreed acceptability of the scheme as a re-use of a listed building), the evident need for small residential units, and future living conditions. However, the Council raised a relevant concern relating to the overall private amenity space that would be available for individual units, and in particular the absence of such space (as opposed to shared communal space) for two 2-bedroom units within the development that could be occupied for families.
7. The Council's case in this respect that the requirement of the relevant policy BE1 for amenity space provision appropriate to the type of development would not be achieved therefore had some merit. The Council was able to substantiate its refusal, and I have no reason to believe that it ignored the benefits of the scheme as part of an overall balance.
8. With respect to the appellant's criticism of the Council's reference to its five year housing land supply position, that was not relied upon by the Council as a determinative matter, and the information provided on this material consideration did not amount to the introduction of a new reason for refusal.
9. The decision to refuse the application fell short of the threshold of preventing or delaying development which should clearly have been permitted, having regard to local and national policy and other material considerations.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, and an award of costs is not warranted.

T G Phillimore

INSPECTOR