



Costs Decision

Site visit made on 7 October 2019

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 28 October 2019

Costs application in relation to Appeal Ref: APP/T2215/W/19/3223790 Car Park rear of Two Brewers Public House, 33 Lowfield Street, Dartford, Kent DA1 1EW

- 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 Urban Enhance Ltd for a full award of costs against Dartford Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a 6 storey building comprising of retail units, bin and cycle store on ground floor and 23 x 1 bedroom apartments on 1st, 2nd, 3rd, 4th and 5th floors with communal terrace at fifth floor level.
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only 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. In relation to the comments received from the Environment Agency (EA), it would appear that the Council sent a copy of the appellant's addendum to the FRA to EA and that EA commented. The Council states that they did not request an amended FRA from the appellant as there were other fundamental issues with the proposal and to do so would have invited abortive work. In addition, I note that as recently as August 2019 EA maintain an objection to the scheme. I find no unreasonable behaviour by the Council in this respect. Furthermore, the Council's general approach when determining applications is set out and this follows the pattern set out above. I find this to be a reasonable approach and would prevent possible abortive work on the applicants' part.
4. The Council states that they made it clear to the appellant that, prior to the submission of the application, that the scheme would need fresh consideration due to the time that had elapsed since the consideration of the previous scheme (considered in 2008 but eventually granted after delays with a S106 Agreement in 2012). I note that since 2008 the Council has adopted its CS, DDPP and SPD relating to the Town Centre. Furthermore, revisions to national

policy and guidance have been forthcoming. EA has also made it clear that its modelling and practices have evolved since the previous scheme. I am content that these considerations mean that the Council was fully justified in taking a fresh look at the proposal and the previous permission did not inevitably mean that this proposal should be granted. In relation to the neighbouring site, behind the listed building at the Two Brewers Public House, this was granted prior to some of the revisions to local policy set out above and also involved enabling development for refurbishment to the listed building. Therefore, I am satisfied that the neighbouring scheme did not mean that the appeal scheme should automatically be granted and that consideration of the noise environment was justified by new policies in the DDPP.

5. I have addressed the issue of flooding above and in my main decision. To reiterate, I find the Council's approach to be reasonable and one that I agree with. In relation to noise, it is apparent from the Council's statement that they found the proposed mitigation to be unacceptable ie the need to have closed windows and mechanical ventilation. Whilst I have disagreed with their conclusion, I consider that it is not unreasonable to desire that residents should be able to open their windows without undue levels of noise.
6. In relation to the development of nearby sites within the Town Centre, the Council has set out that there are a number of schemes and notably some expressions to redevelop the neighbouring site. Whilst I can understand that a development such as the appeal scheme could have some effects outside its site due to almost the entire site being built upon it seems to me that a greater level of certainty is required to justify refusal of a proposal. However, an element of judgement is required and I do not think that the Council has exercised this judgement unreasonably in this case.
7. Although I have not agreed with all of the issues raised by the Council, I consider that they have provided sufficient evidence and support for the reasons for refusal and the allegations set out by the appellant are not justified.
8. As a consequence, I conclude that the Council's actions have not been unreasonable. Therefore, the conditions necessary for an award of costs have not been satisfied.

ST Wood

INSPECTOR