
Costs Decision

Site visit made on 4 September 2019

by L Crouch BA (Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Costs application in relation to Appeal Ref: APP/T0355/W/19/3231286 31-33 Belmont Road, Maidenhead SL6 6JL

- 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 L Tusz of Leon Tusz (Developments) Ltd for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of planning permission to erect two two-storey terraces of three dwellings with access, parking and amenity space.
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Decision

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

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.
3. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.
4. The appeal followed the refusal on 6 March 2019 of an application made on 20 July 2018 to build two two-storey terraces of three dwellings with access, parking and amenity space. The grounds for refusal were the harm that the proposed development would cause to the character and appearance of the area and to highway safety.
5. The applicant believes that the Council have previously permitted, under application 15/02671, landscaping which is 'directly comparable' to the current appeal scheme. However, although the Council have accepted in the previous application the landscaping to be sufficient, in the current appeal scheme the Council considered that the landscaping was not sufficient or 'meaningful' and was deemed unacceptable. The applicant considers that this has resulted in inconsistencies and unreasonable behaviour when judged against the extant planning permission.
6. However, the built form of these two schemes are materially different with the permitted scheme containing less built form along the frontage, a larger gap between the two buildings, greater opportunity for planting along the front of the building and a wider area of landscaping to the west of the front of the hardstanding, which would again allow for increased opportunities for planting.

All these factors indicate that the landscaping in the two schemes are not directly comparable.

7. I therefore find that the Council have not been inconsistent nor acted unreasonably when weighing this reduced level of landscaping within the Officer Report and Statement of Case against the development plan policies and finding that there would be harm to the character and appearance of the area.
8. The applicant also believes that the Council has made 'substantive errors' in its justification of the grounds of refusal relating to highway safety. However, I consider that the Council's Officer Report, and subsequently the reason for refusal, has set out that there is insufficient evidence from the appellant to demonstrate that the proposed 12 tandem spaces would not result in additional on-street parking.
9. Whilst not explicit in their reasoning it follows from the Officer's Report, into the reasons for refusal, that the Council had concerns with the layout of parking on this site and whether it would be sufficiently used to not have implications for on-street parking, and subsequently conditions of highway safety. The Council's Parking Strategy 2004 (PS) states that 'on-street parking spill from residential properties will need to be weighed against the potential harm to environmental amenity and road safety'. Whilst there is no objection to the scheme from the Highway Authority (HA) the Council is the decision maker and it is not un-reasonable of them to require justification in-line with their Policies and PS.
10. Whilst I have taken a more over-arching view of accessibility, associated parking standards and the likely pressure for on-street parking, I do not consider the Council to have acted unreasonably by applying their own Development Plan Policies in a more focused manner.
11. The applicant also says that the Council made a 'fundamental' error by incorrectly multiplying the agreed trip generation rate by number of bedrooms rather than number of units. The applicant says that if it has been applied correctly in their opinion it would have led to a 'reduction in vehicle movements by comparison with the extant planning permission on the site'.
12. The Council has been clear and consistent, in determining this application, that the approach they have taken was based on vehicle movements per bedroom of the proposed units rather than on a per unit basis. I recognise that this is different to the commentary on an earlier application on the same site. The Council have justified this approach as part of the appeal and have sought to defend this within their Appeal Statement. Therefore, I do not feel that the Council has failed to substantiate or be unreasonable on this matter.
13. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described by the PPG, has not been demonstrated and that an award of costs is not justified.

L Crouch

INSPECTOR