
Costs Decision

Site visit made on 12 November 2019

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2019

**Costs application in relation to Appeal Ref: APP/J0350/W/19/3224244
17 to 31, Elmshott Lane, Slough, Berkshire, SL1 5QS.**

- 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 Mirenpass Limited for a full award of costs against Slough Borough Council (the LPA).
 - The appeal was against the refusal of an application for outline planning permission for the demolition of existing retail/residential buildings. Construction of five storey building and basement consisting of associated parking at basement level, retail/storage at ground floor level and the formation of 34 no. two-bedroom flats and 85 no. one-bedroom flats at first, second, third and fourth floor levels. Associated landscaping and realigned access to Elmshott Lane.
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Decision

1. A partial award of costs is made against the LPA in accordance with the terms set out in the Order below.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but costs may be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The aims of the costs regime include: encouraging local planning authorities to properly exercise their development management responsibilities; to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and; to discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets all reasonable objections.
4. The National Planning Policy Framework (the Framework), amongst other things, requires local planning authorities to approach decisions on proposed development in a positive and creative way. It emphasises the value of early engagement in improving the efficiency and effectiveness of the planning system for all parties and in securing improved outcomes for the community. However, the Framework also recognises that local planning authorities cannot require developers to engage before submitting planning applications.
5. The applicant has argued that it took every step possible to avoid the appeal. It has informed me that its agent was not contacted by the LPA's officers before the application was presented to the planning committee and the LPA has not sought to enter into negotiations regarding the section 106 planning obligations. The LPA is also criticised for refusing the application rather than deferring it for "*consultation*".

6. I also note the applicant's criticisms regarding the length of time it can take to conduct pre-application discussions within the Borough, comments regarding staff turnover and the conduct of a member of the LPA. Whilst this is no doubt very frustrating for the applicant these are not matters that I am able to consider in determining this costs application.
7. It is surprising to learn that for a development of the type and scale proposed the applicant chose not to enter into any pre-application discussions with the LPA or members of the local community. This would have afforded the applicant an opportunity of explaining the proposals to those with responsibility for determining the application as well as those would most likely be affected by the development. It would also have allowed for local concerns to be considered and the proposals amended before an application was submitted.
8. In determining the appeal I found that planning permission should be withheld on the basis of the impact upon the character and appearance of the area, the living conditions of some neighbouring and incoming residents and on the proposed affordable housing arrangements/intended mix of housing. The LPA did not therefore act unreasonably in identifying these matters within its reasons for refusal.
9. The LPA also expressed concerns regarding the proposed surface water drainage arrangements and the possible flood risk implications. Whilst I have found that permission should not be withheld on such grounds, in so doing, I was able to take into account the contents of the applicant's Flood Risk and Drainage Strategy (FRADS). This post-dates the LPA's decision.
10. Flooding is an important issue and it is unclear why the FRADS was not submitted when the application was made or before it was determined. In the absence of this important document it is unsurprising that the LPA identified surface water drainage as a potential concern. It did not therefore act unreasonably and cause the applicant to incur unnecessary or wasted expense with regards to this matter.
11. Within its Statement (sent on 28 October 2019) the LPA accepted that it was unable, following the publication of the Housing Delivery Test results, to demonstrate five years housing land supply (HLS). It appears that this was the first time the LPA had conveyed to the applicant its change in stance on HLS.
12. In all likelihood, when the appeal was submitted the LPA was still of the view that it could demonstrate five years HLS. Whilst the applicant probably did not therefore incur unnecessary costs in preparing its 'Update Report to the Planning Statement' (February 2019) it must have been evident to the LPA before 28 October 2019 that it could no longer demonstrate 5 years HLS. Had this been conveyed to the applicant sooner the applicant's Review of Slough Borough Council's HLS (also dated October 2019) could have been avoided. The LPA acted unreasonably in not notifying the applicant of its latest HLS position and this caused the applicant to incur unnecessary expense.
13. In addition to the above, having refused permission on the grounds of highway safety, infrastructure, air quality and crime prevention, the LPA failed to substantiate its concerns on these matters at appeal. This also caused the applicant to incur unnecessary expense in having to refute the LPA's concerns.

14. Given the above, I find that the LPA acted unreasonably regarding matters relating to HLS, highway safety, infrastructure, air quality and crime prevention and this caused the applicant to incur unnecessary or wasted expense. A partial award of costs is therefore justified.

Costs Order

15. 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 Slough Borough Council shall pay to Mirenpass Limited the costs of the appeal proceedings described in the heading of this award. These shall be limited to those costs incurred in responding to the Council's concerns in respect of highway safety, infrastructure, air quality, crime prevention and those costs incurred in producing the report commissioned by the applicant and entitled 'Review of Slough Borough Council's Housing Land Supply' dated October 2019. Such costs shall be assessed in the Senior Courts Costs Office if not agreed.
16. Mirenpass Limited is now invited to submit to Slough Borough 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.

Neil Pope

Inspector