



Costs Decision

Site visit made on 24 September 2019

by Christopher Butler BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Costs application in relation to Appeal Ref: APP/N1540/W/19/3229035 Wych Elm House, Wych Elm, Harlow CM20 1QR

- 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 Prisma Property Developments (Harlow) Limited for a full award of costs against Harlow District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing buildings and the erection of a 2-10 storey building comprising 102 no. residential units (Class C3), and 780 sq. m of ground floor commercial floorspace (Classes A1, A2, A3), together with associated works and public realm improvements.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers in refusing the application for not complying with the Council's current and emerging policies concerning the provision of affordable housing. The appellant considers the Council made this decision despite an independent assessor, acting on the Council's behalf, concluding the development would not be viable with a provision of affordable housing having reviewed the submitted viability assessment.
4. As such, the appellant considers the Council refused its application without adequate reason to do so and that the Council has failed to substantiate their reason for refusal with any technical evidence in their defence of the appeal. The appellant considers that this constitutes unreasonable behaviour, which has directly caused them to incur unnecessary or wasted expense.
5. An example of unreasonable behaviour by a local planning authority includes the failure to produce evidence to substantiate each reason for refusal on appeal and Planning Practice Guidance 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.
6. In regard to the Officer's recommendation in the report to the Members of the Council's Development Management Committee, I note the report and its

recommendation. However, the Council Members are entitled not to accept the professional advice of the Council's Officers, so long as a case could be made substantiating their reason for refusal.

7. The Council had the appellant's viability assessment independently assessed, and its Officer's report advised that the professional advice received concluded that the appeal development would not be viable with a provision of affordable housing. I have not been presented with any substantiated evidence to the contrary.
8. The Council refers to a subsequent planning application for development at the appeal site for the erection of a 2-11 storey building comprising 122 residential units, which includes an element of affordable housing. Again, I have not been provided with any details of that development or specific evidence that demonstrates the viability of that scheme, although I do note that the Council's appeal statement specifically points out that the contributions being offered in that subsequent application have been offered by the appellant despite that development being more unviable than the refused scheme.
9. In the absence of any technical or substantive evidence to the contrary, it seems to me that the Council has persisted to defend a reason for refusal that it has fail to substantiate at appeal in the face of strong evidence to the contrary. This amounts to unreasonable behaviour that has directly caused the appellant to incur unnecessary or wasted expense as a result of having to pursue an appeal. Full costs are awarded against the Council accordingly.

Costs Order

10. 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 Harlow District Council shall pay to Prisma Property Developments (Harlow) Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Harlow District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Christopher Butler

INSPECTOR