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## Costs Decision

Hearing Held on 1 December 2020

Site visit made on 4 December 2020

**by H Porter BA(Hons) MSc Dip IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> January 2021**

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### **Costs application in relation to Appeal Ref: APP/T0355/W/20/3248423 Riders Country House Hotel, Bath Road, Littlewick Green, Maidenhead SL6 3QR**

- 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 Windsor Clinical & Home Care Services Group Ltd for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
  - The hearing was in connection with an appeal against the refusal of planning permission for change of use from C1 (Hotel) to C2 (Residential Care Home), together with associated parking, landscaping, provision of amenity space and a rear porch extension.
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### **Decision**

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

### **The Costs application**

2. The appellant's application for costs was submitted in writing and supplemented orally at the Hearing. The written application was made on the basis that the appellant had been put to unnecessary and wasted expense due to the unreasonable behaviour of the local planning authority. The oral submissions can be summarised as follows: that the Council's officers were in a difficult position having to defend the decision of its members; that the event's proceedings endorsed the written submission; and that costs should be awarded in full.

### **Rebuttal by the Council**

3. The Council submitted a response to the appellant's costs application in writing. The following additional points were made orally during the Hearing: that the Council's Member's made a decision that was not in accordance with the officer's recommendation; that evidence has been provided to support the Council's position and reasons for refusal; and that the costs application should be rejected.

### **Reasons**

4. 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.

5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal by failing to produce evidence to substantiate each reason for refusal and introducing vague, generalised or inaccurate assertions about a proposal's impact that were unsupported by any objective analysis.
6. The Council had considered two planning applications prior to recommending the planning application for this appeal for approval to its Members. Through that process, there has clearly been a sequence of discussion and modification in seeking to overcome issues that the Council's officers had raised with previous iterations. The Council Members were not bound to accept the recommendations of its officers and entitled to take an alternative stance on matters. That said, there is still a requirement for Members to be able to properly substantiate any concerns identified.
7. The Council's first reason for refusal alleged harm and safety risk to future residents and wider highway users. Within its supporting statements, the Council provided nothing to refute the appellant's compelling evidence or to sufficiently explain why, in residing close to a busy main road, the safety of the care home occupiers would be put at risk. The Council has given conflicting remarks as to whether there would be negative highway safety impacts and failed to substantiate how the development would give rise to conflict between pedestrians and vehicles.
8. The second reason for refusal relates to the sustainability of the location. The Council's statement and subsequent comments made during the Hearing, in my view, did nothing to provide objective analysis of the alleged planning harms or breaches of national policy. The Council's statement did not expound how conflict with policies within the National Planning Policy Framework would arise, nor, seemingly, to take into account the specific nature of the proposed use or its future occupiers. Instead, in seeking to justify its reasons why the future occupiers of the care home and their carers should not be in an isolated location, the Council cited World Health Organisation and other non-planning guidance.
9. On this basis, both the reasons for refusal did not stand up to scrutiny and, compounded by failings in the way the Council presented its case, were unsubstantiated. In my judgement, this amounts to unreasonable behaviour on the Council's part.
10. Furthermore, the Council failed to consider the planning policy arguments that were appropriately set out within the officer's report and the appellant's evidence. Indeed, in relation to the common ground of a current undersupply of housing land in the Borough and the necessary application of the 'tilted balance', the Council's appeal statement is inadequate. This leads me to the view that, in refusing planning permission, the Council failed to have proper regard for material considerations, including national policy and the presumption in favour of sustainable development, which indicated planning permission should have been granted.

## **Conclusion**

11. In conclusion, unreasonable behaviour has been demonstrated. In this instance, the costs incurred in the appeal process were an unnecessary expense, as the entire appeal could have been avoided altogether. I therefore

find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

12. 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 the Council of the Royal Borough of Windsor and Maidenhead shall pay to Windsor Clinical & Home Care Services Group Ltd, 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.
13. The applicant is now invited to submit to the Council of the Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*H Porter*

INSPECTOR