
Costs Decision

Hearing Held on 9 February 2021

Site visit made on 10 February 2021

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 11th March 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3246442 Land to rear of 8 - 13 High Street, Calne, Wiltshire

- 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 Churchill Retirement Living for a partial award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for 39 No apartments for older people (sixty years of age and/or partner over 55 years of age), guest apartment, communal facilities, access, car parking, landscaping and 4 No retail units.
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Decision

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

The submissions for Churchill Retirement Living

2. In respect of reason for refusal one the Council have relied upon a reason for refusal relating to the mix and proportion of land uses. The proposal in terms of land use in this appeal was in all material respects the same as that proposed in the previous scheme¹ where the issue of mix and proportion of land use was not a reason for refusal. In fact in the previous scheme the officer's report concluded that 'on balance' the proposal complied with the policy. The Council have not therefore determined the cases in a consistent manner.
3. Furthermore, and also in relation to reason for refusal one the Council have failed to substantiate this reason for refusal, having misunderstood the relevant planning policy.
4. In respect of reason for refusal three the Council have also failed to determine the cases in a consistent manner. They have compounded this by making vague and generalised assertions about the proposal's impact, unsupported by objective analysis, thereby failing to substantiate the reason for refusal.

The response by Wiltshire Council

5. The application for costs relates to a con-joined appeal and therefore would have happened anyway as the appellant was appealing the first scheme as well as the second.

¹ APP/Y3940/W/19/3224155

6. In respect of the first reason for refusal, this is an interpretive matter and consequently members were entitled to come to a different conclusion to that of the appellant, relying on the professional advice of their policy planner.
7. The committee was not bound by the terms of the previous refusal and they exercised their right to consider matters more fully and respect the commitment made to the Neighbourhood Plan process. The appellant's submissions selectively ignores the requirement that development proposals must consider and address the Calne Town Centre Masterplan. It was not therefore unreasonable of members to disagree with the appellant. The Masterplan is a material consideration of significant weight given the direct policy reference and the community engagement involved.
8. The committee considered the variety of shops, facilities and services sought within the Masterplan and the desire to create a more diverse offering and concluded that the modest increase in retail floor space together with the single community housing for the home owning elderly does not achieve a suitable range of development. It would be at odds with the visions set out and directly related to the Neighbourhood Plan.
9. With regard to the third reason for refusal the committee members were informed by their local knowledge. They examined the impact on residential amenity and concluded that the scale and number of windows would lead to a diminution of residential amenity for those living on the High Street by the perceived overlooking. There are no specific space standards applicable so that the issue is one of judgement and therefore even if the substantive matter is not agreed by the Inspector's similar judgement it does not follow that the member's assessment was unreasonable.

Reasons

10. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs may be awarded where a party has behaved unreasonably and this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. In the case of local planning authorities unreasonable behaviour may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The PPG makes clear that a local planning authority are required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour.
11. In relation to substantive behaviour they include (1) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations (2) failure to produce evidence to substantiate each reason for refusal on appeal and (3) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
12. The appellant's costs claim relates to two different reasons for refusal and I will deal with each in turn. There are two limbs to the appellant's case in relation to reason for refusal one. The first of these is inconsistency.

Reason for refusal one - inconsistency

13. The previous scheme was refused for a number of reasons but there was no issue with the mix and proportion of land use. In fact the officer's report concluded that 'on balance' the proposal complied with the policy. Whilst this scheme was refused planning permission, no mention was made of the mix and proportions of use at any stage. The second scheme, the one the subject of this appeal, was identical in terms of the mix and proportions of use, and the officer's report once again found that it was broadly in compliance with the various policies. Notwithstanding this, a reason for refusal was formulated that alleged that the proposed scheme did not comply with the policies. From this I can only conclude that the Council have been inconsistent.

Reason for refusal one – failure to substantiate

14. The first reason for refusal stated that the proposed development did not comply with the requirements of Core Policy 8 (CP8) of the Wiltshire Core Strategy (CS) or the vision outlined within the Calne Community Neighbourhood Plan (NP).
15. The Council's statement to this appeal deals with this matter between pages 11 and page 16, and references the report of the Council's Spatial Planning Officer. The first few pages of the statement just re-iterates what is contained within the vision in the NP. At paragraph 2.18 on page 14 it is emphasised that development proposals must consider and address their relationship with the vision set out in the Masterplan. However, it is not explained why the proposed development does not do this.
16. In the next paragraph it states that *the members determined that the proposed mixed use differed sufficiently from the relevant mix and details outlined in the Masterplan and accordingly would not contribute to meeting the objectives of the Masterplan*. The statement then goes on to say that such conflict will not add to the area's vitality and viability throughout the day, particularly given the noted lack of cultural and entertainment facilities in Calne. However, nowhere does the statement specify how or why the proposed use is deemed to differ, or indeed why the proposed development would not add to the area's vitality and viability.
17. The report of the Council's Spatial Planning Officer states that that *the Masterplan envisages this site being developed for a mixture of retail units and townhouses or retail units with dwellings above, so there is a clear conflict in this respect*. However, I have already found in my appeal decision that accompanies this costs decision that the proposed development would broadly accord with the Masterplan in respect of this particular site in providing a mix of residential and retail. I note that the vision also makes clear that a range of housing types will be provided.

18. I conclude that the Council have failed to adequately substantiate this reason for refusal.

Reason for refusal three

19. The reason for refusal in respect of living conditions just mentions that the height, mass, scale and placement of windows in close proximity to neighbouring residential properties would result in an unacceptable level of overlooking. Nowhere, in either the reason for refusal or the Council's Hearing

statement, is there any indication of which neighbours would be likely to be negatively impacted, or indeed which windows or elevations of the proposed development would cause such impact. This seems to me to be exactly the vague and generalised assertions that the PPG deems to constitute unreasonable behaviour.

20. The appellant's also make the point that the proposed development is similar to the previously refused scheme and that that scheme did not attract a living conditions reason for refusal. Once again it seems to me that the Council have failed to consider similar schemes in a consistent manner.

Conclusion

21. I have found that in relation to reasons for refusal one and three the Council have been inconsistent in their consideration of the proposed scheme when compared to the previous very similar scheme. Furthermore, they have failed to substantiate both reasons for refusal one and three. They have therefore behaved unreasonably and this unreasonable behaviour has directly caused the appellant to incur unnecessary or wasted expense in the appeal process in respect of these reasons for refusal.

Costs Order

22. 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 Wiltshire Council shall pay to Churchill Retirement Living, the costs of the appeal proceedings limited to those costs incurred in relation to the Council's first and third reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to Wiltshire 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.

John Wilde

Inspector