
Costs Decision

Site visit made on 4 May 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Costs application in relation to Appeal Ref: APP/T0355/W/20/3265984 Essex Lodge, 69 Osborne Road, Windsor SL4 3EQ

- 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 Sorbon Estates 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 for demolition of existing building and construction of new building comprising 10 x two bedroom flats with associated landscaping, parking, alteration to existing access and new bin enclosure.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; fails to produce evidence to substantiate each reason for refusal on appeal; and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant has applied for costs on the basis that the reason for refusal lacks any reasonable merit and as such demonstrates unreasonable behaviour by the Council's Planning Committee. Specifically, the applicant considers that Members were motivated by a desire to retain the building although this does not form part of the reason for refusal.
5. In this case the Council's Officers recommended approval but the Council Members did not accept the recommendation. Whilst I note the discussions by Members at the Planning Committee, the Council refused the application on the basis of its layout, scale and mass; due to it being set further forward along Osborne Road; and harm to the character and appearance of the area and the setting of the Inner Windsor Conservation Area. Members did not consider the public benefits of the scheme outweighed the harm identified.

6. The decision is one which is a matter of judgement. While the Members are not duty bound to follow the advice of their professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. The Council provided an appeal statement which set out a detailed justification for the Members' decision. As can be seen in my appeal decision, I have similarly found that there would be harm to the character and appearance of the area and the designated heritage asset, namely the Inner Windsor Conservation Area.
8. I am satisfied that the Council has substantiated each of its reasons for refusal and provided objective analysis of the proposal's impact. I am therefore satisfied that the Council acted reasonably in refusing the application and the applicant has not incurred unnecessary or wasted expense in the appeal process.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Rachael Pipkin

INSPECTOR