The Planning Inspectorate

Costs Decision

Site visit made on 21 March 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Costs application in relation to Appeal Ref: APP/J0350/W/21/3276198
17 to 31 Elmshott Lane, Slough 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 Slough Borough Council for a full award of costs against Joe Mirenpass Limited.
- The appeal was against the refusal of planning permission for development described as 'Revised Outline planning application with all matters reserved for the demolition of existing retail/residential buildings. Construction of three storey plus mansard building, over basement, consisting of associated parking at basement level, retail/storage at ground floor level and the formation of 9 no. three bedroom flats, 19 no. two-bedroom flats and 56 no. one-bedroom flats, including 20% affordable housing on site, at first, second, and mansard floor levels. Associated landscaping and realigned access to Elmshott Lane.'

Decision

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

Procedural Matter

2. An application for costs was also made by Joe Mirenpass Limited against Slough Borough Council. This application is the subject of a separate Decision.

Reasons

3. 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.

4. The Council has applied for an award of costs on procedural grounds. In this regard, the Council's costs application has quoted the types of behaviour that might be regarded as unreasonable, as set out under paragraph 52[1] of the PPG. Amongst these, the PPG refers to introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen; and delay in providing information.

5. It is the Council's view that the appellant's grounds of appeal include the introduction of new evidence resulting in 8 grounds of appeal in response to 4 reasons for refusal. The appellant introduced a new affordable housing

[1] Paragraph: 052 Reference ID: 16-052-20140306

proposal that was materially different to that proposed as part of the planning application. The Council asserts that in making substantive changes the Council had to undertake additional preparatory work that would not have otherwise arisen and that the changes were not secured through a section 106 legal agreement.

6. It will be seen from my decision that I have not accepted the proposed changes to the provision of affordable housing on the basis that the changes were material. However, the Council had to respond to the proposals put forward by the appellant which would have given rise to additional work. It was unreasonable of the appellant to have made these changes after the decision had been issued due to the extent of those changes. Therefore, I consider the appellant's behaviour has been unreasonable in this regard, causing the Council additional work.

7. The Council was notified of the appeal by the appellant on 1 June 2021 by email containing a number of attachments. A copy of that email has been provided which indicates the attachments. There is no evidence that the appellant's statement of case was attached to that email. Subsequently, the Council contacted the Planning Inspectorate on 10 November 2021 advising that they had not received the appellant's statement.

8. It is evident from the 1 June 2021 email that no statement of case had been attached. It seems to me that this was an oversight rather than unreasonable behaviour as the statement had been received by the Inspectorate. The Council, on receipt of that email, could have sought clarification at that point rather than later on in November. Therefore, I do not consider this amounts to unreasonable behaviour by the appellant.

9. Whilst I consider that the Council may not have been put to large amounts of additional expense in dealing with the appellant's additional proposals, extra costs were incurred in preparing evidence to defend those aspects of the appeal and an award in these specific respects is appropriate.

Conclusion

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

Costs Order

11. 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 Joe Mirenpass Limited shall pay to Slough Borough Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the appellant's revised proposals for affordable housing.

12. The Council is now invited to submit to Joe Mirenpass Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Rachael Pipkin

INSPECTOR