



Costs Decision

Site visit made on 29 March 2022 by G Sibley MPLAN MRTPI

Decision by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Cost application in relation to Appeal Ref: APP/T0355/D/21/3281209 Queens Head, Windsor Road, Maidenhead, Berkshire SL4 5UJ

- 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 Ms Celeste Vorster for the full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was made against the refusal of application for prior approval for construction of two additional storeys to property with maximum height of 6.35m.
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Decision

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

Procedural Matter

2. The following report has been prepared by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding whether to make an award of costs.

Reasons for the Recommendation

3. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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.
4. The PPG advises that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The Council's officer's report sets out their reasoning why the scheme did not comply with Schedule 2, Part 1, Class AA of the GPDO. The report assessed the effect of the proposal upon the external appearance of the dwelling. The case officer carried out an objective assessment of the proposal based on their planning judgement and substantiated their refusal reasons with reference to relevant policy considerations. Whilst the applicant may disagree with the terminology used by the Council, the terminology, whilst colloquial, still set out clearly the concerns the Council had with the scheme.
6. Furthermore, Local Planning Authorities must determine prior approval applications under Class AA of Part 1, and Parts 3 and 20 with regard to the National Planning Policy Framework (Framework) 'so far as relevant to the

subject matter of the prior approval, as if the application were a planning application.'

7. Paragraph 134 of the Framework states that development that is not well designed should be refused, especially where it fails to reflect local design policies. Therefore, there was provision within the Framework, which is relevant to prior approval applications, to consider the design of the proposal with the overall street scene. Additionally, development plan policies may be relevant to prior approval cases, but only insofar as they relate to the matters, and only as evidence to support (rather than being the basis of) the planning judgement made.
8. The Council referred to Policies DG1 and H14 of The Royal Borough of Windsor and Maidenhead Local Plan (LP) (2003) and the Borough Wide Design Guide Supplementary Planning Document (2020) in the first refusal reason.
9. The policies and the Design Guide refer to how proposals would be assessed in relation to their effect upon the character and appearance of the building itself and its effect upon the wider area. The assessment set out in condition AA.2(3)(a)(ii) includes but is not limited to the external appearance of the primary elevation of the dwelling and any side elevation fronting a highway, or the design and architectural features of those elevations. Evidently, the policies are relevant to this matter. Moreover, the Council identified how the policies were taken into consideration after assessing the proposal and therefore, the policies were not the basis upon which the planning judgement was made. Therefore, the planning judgement made by the Council was not unreasonable.
10. Following the submission of the appeal the Council adopted the Borough Local Plan 2013 – 2033 (BLP) (2022) which superseded the LP. The Council determined the application in accordance with what was the adopted development plan at the time the decision was made. Whether the policies in the emerging plan were referred to or not was a matter of planning judgement dependent on what weight the Council considered should be given to the emerging policies at the time the decision was made. It was not unreasonable behaviour to not refer to policies within the emerging BLP, given that the BLP had not been adopted at that time. The BLP was not adopted until several months after the decision was made which indicates that the policies could still have been subject to modification at the time the decision was made.
11. It came to my attention that the BLP was subsequently adopted and given the change in policy context it was necessary and reasonable that both parties were given the opportunity to comment on the change in policy context. The Council did not request that I do this. This was undertaken because Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 state that decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
12. The BLP had been adopted and is now the development plan that the appeal decision must be taken in accordance with and in the interest of fairness, I requested the additional comments. Consequently, the Council did not act unreasonably determining the application against what was the adopted development plan. Moreover, the Council were not responsible for the additional request for comments because I instigated this. The Council determined that ten policies within the BLP were relevant to the proposal and

thus quoted them in their response to my request. This was a matter of planning judgement and whilst the applicant disagreed with the Council on this matter, this does not amount to unreasonable behaviour. Therefore, the Council did not act unreasonably in this regard or cause unnecessary expense.

13. The Council has a statutory duty under the Natural Environment and Rural Communities Act 2006 (NERC Act) which places a duty on local authorities and other public bodies to consider the biodiversity when carrying out all of their functions (Paragraph 40(1)). Where an application fails to satisfy these obligations, this may be treated as a valid reason for refusal.
14. Notwithstanding whether the Council requested the information during the determination of the application, the Council had a statutory duty to consider the impact of the proposal upon protected species and determined that the information submitted was insufficient. Furthermore, it is the applicant's responsibility to provide the necessary information to support the application. Whilst it is not advised that new evidence is submitted during the appeal process, the applicant could have submitted an ecological assessment of the site in relation to protected species but chose not to. As such, the applicant has not expended unnecessary expense defending this refusal reason and the Council were undertaking their statutory duty and as a result did not act unreasonably.
15. The application has not shown that the Council's refusal was unreasonable or that this was a case where the proposal should clearly have been granted. Consequently, in the absence of unreasonable behaviour or evidence of wasted expense, as described in the Planning Practice Guidance, an award of full or partial costs is unjustified, and I recommend that the application should be refused.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's costs report above, and, on that basis, I too agree and conclude the applicant has failed to demonstrate unreasonable behaviour resulting in unnecessary expense as described in the PPG. The application for costs is therefore refused.

Chris Baxter

INSPECTOR