



Costs Decision

Site visit made on 7 April 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Costs application in relation to Appeal Ref: APP/W1525/W/21/3284223 13 Cottage Place, Chelmsford CM1 1NL

- 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 Man Ltd for a full award of costs against Chelmsford City Council.
 - The appeal was against the refusal of planning permission for the demolition of existing building and erection of mixed-use development comprising of 125 sq. m of commercial ground floor and 7no. residential apartments above.
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Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may only 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 appeals process. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the Guidance states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. In this instance, the applicant states that the Council did not enter into discussions regarding potential changes to the scheme to overcome its concerns and failed to take account of the Daylighting Report¹ (DR) submitted with the applicant's appeal documents. It also failed to take into account point 7 of the Design and Access Statement submitted in support of the planning application and misapplied the standards as set out in Appendix B of the Chelmsford Local Plan 2020 (LP).
4. It is evident from the Council's submissions that it did consider the DR submitted by the applicant. However, it noted that as the DR was based upon assumptions that the windows in the flank and northern elevations would be larger, it did not accurately reflect the development sought. Therefore, as the DR was submitted as part of the applicants appeal documentation, it is not unreasonable that the Council could have suggested windows could be made larger to increase light, as this information was not before it when the planning application was determined.

¹ Daylight Report of the North Facing LKDining Room dated 18 January 2022

5. Moreover, if the Council had raised the matter of poor lighting within certain rooms, it would follow that should the applicant disagree with that verdict an appropriate daylight assessment could overcome this particular issue. Therefore, I do not find that the Council acted unreasonably as it was bound to consider the information submitted in support of the planning application.
6. Turning to Appendix B of the LP, the applicant maintains that none of the criteria within Table 9 or indeed Figure 12 are applicable to the development that was determined by the Council and none are mentioned within its decision notice. It is clear from paragraph B.1 of Appendix B that the standards contained within are applicable to all new residential development. Therefore, although Appendix B of the LP does not refer to residential developments that are adjacent to commercial buildings, there is nothing before me to suggest that such relationship should not be the subject of the standards set out within Appendix B. Moreover, Appendix B should also be considered as a whole and is not just confined to the standards as set out within Table 9 and Figure 12.
7. Furthermore, although point 7 of the applicant's Design and Access Statement provided an example of the use of vision control film, the Council did accept its potential use in the rear bedroom windows. Nevertheless, it maintained that its use would then restrict the outlook from these rooms and whilst overlooking between the flank elevations could potentially be controlled through the use of obscure glazing, this would in turn lead to a reduction in light to the rooms they serve. Additionally, the DR submitted in support of the appeal confirmed that to ensure there was adequate light, the windows in the north facing rooms would need increasing in size. Consequently, I am not persuaded that the Council was unreasonable in finding the rooms to be gloomy or dark.
8. The applicant also refers to the Council failing to discuss revisions to the scheme that may have overcome its concerns regarding the effect of the proposal on the living conditions of future occupants of the development. However, it is clear that Appendix B seeks to ensure that all developments secure a good standard of living environment, and for the reasons set out above, I am satisfied that it was reasonable for the Council to arrive at the conclusions it did regarding the effect of the development on the living conditions of its future occupiers.
9. It is also suggested that I consider the possibility of ruling that the applicant be awarded a "free go" for a further planning application, should it be required. However, such matters are beyond my remit and the limitations of an application for an award of costs.

Conclusion

10. Based upon the evidence before me and upon reviewing the reasons for refusing planning permission, I am satisfied that the Council gave sufficient consideration to the planning application and unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and an award of costs is not `justified.

Graham Wyatt

INSPECTOR