
Costs Decision

Site visit made on 6 June 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2022

Costs application in relation to Appeal Ref: APP/T0355/W/21/3283130 Belmont Place, Belmont Road, Maidenhead SL6 6TB

- 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 Millie Boffey of Treadneedle Portfolio Services Ltd for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of grant approval as required under Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) the change of use from offices (Class B1(a)) to dwellinghouses (Class C3) to create x 18 flats.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that 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.
3. The applicant's contention is that the Council have prevented a development that should clearly have been approved when having regard to the General Permitted Development Order. The proposal would support the imperative to significantly boost the supply of housing.
4. Amended plans were submitted to the Council to address the Council's initial comments and did not constitute a material change to the substance of the application. There is nothing in legislation to suggest that plans could not be substituted through the determination period of the prior approval application. A critical element of the planning system is that the applicant has the opportunity to work proactively with the local authority, but the Council have been unnecessarily inflexible, negatively bureaucratic and critically at odds with the way the planning system is intended to work. Due to changes to the General Permitted Development Order the refusal would consequently require the applicant to make a full planning application at significant cost and time delay.
5. The concerns of the Council could have been fully addressed by accepting the revised plans submitted or through the application of reasonable conditions requiring the provision of plans showing storage space and restrictive to occupancy of flat 17. The applicant contends that these collective failures have

resulted in the appellant incurring significant additional time and costs in making an appeal.

6. The Council have advised as part of their Statement of Case that the amended plans received were not accepted as they aimed to change the lawfulness status of the proposed development and did not relate to the prior approval matters of Class O. It appears to me that there is a difference in opinion between parties as to whether or not the amended plans should have been accepted by the Council. However, the Council have provided an explanation as to why the amended plans were not accepted. The applicant has not commented on the Council's explanation. On the evidence available to me I have no substantive reason before me that would lead me to question the Council's judgement in relation to this matter.
7. Procedure W.(13) indicates that prior approval may only be granted 'subject to conditions reasonably related to the subject matter of the prior approval'. However, the requirement of the prior approval process is to demonstrate that the proposal is permitted development under the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) under Schedule 2, Part 3, Class O, as amended by The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020. The proposal does not clearly illustrate that the proposal would comply with the nationally described space standard as required by the 2020 Regulations. This is what is required by the prior approval process. It is not the purpose of planning conditions to seek further plans/detail to make the development comply with Class O.
8. It is advised that due to changes to the General Permitted Development Order the refusal would consequently require the applicant to make a full planning application to the Council. Changes to the planning system are an inevitable part of an evolving legislative framework. Whilst the changes may put the applicant to further cost and time delay in seeking to achieving the desired outcome, this is not directly relevant to this prior approval case.
9. The PPG advises that 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. I do not consider any of the matters raised and discussed above would have obviated an appeal in this case.

Conclusion

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

Nicola Davies

INSPECTOR