
Costs Decision

Site visit made on 8 August 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022

Costs application in relation to Appeal Ref: APP/T0355/W/21/3275978 6 Harrow Lane, Maidenhead SL6 7PE

- 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 Mr Malkit Purewal on behalf of MSHR Capital LLP for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal to grant prior approval for change of use of A1 shop and associated garage to two dwellings (Use Class C3).
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of an 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 Council's first reason for refusing to grant prior approval identifies conflict with paragraph M.2(1)(d) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), which relates to the provision of adequate services. As will be seen from my decision on the prior approval appeal, I have accepted the Council's position that it would be undesirable for the use of the eastern building to change to Class C3 (dwellinghouses). Moreover, it is not the case that a retail use must occupy a town centre location in order for it to provide a potentially valuable service. As such, the Council's first reason for refusal was reasonable and adequately substantiated.
4. The second reason for refusal identifies conflict with paragraph M.2(1)(e) of the GPDO and sets out that the proposal represents a poor standard of design due, in particular, to the layout and internal size of Flat 2. In accordance with the relevant provision of the GPDO, matters relating to internal layout and potential substandard amenity for future occupiers are not available to be considered. Paragraph M.2(1)(e) instead relates specifically to the design or external appearance of the building. I further note that the nationally described space standard does not apply in this case by virtue of the date the application for a determination as to the requirement for prior approval was submitted¹.

¹ prior to 6 April 2021

5. It is stated within the Council's Officer Report that the proposed changes to the external appearance of the building would not cause significant harm to the character of the street scene or wider area. In this context, and notwithstanding any reference made to relevant policy or guidance, the Council erroneously identified conflict with paragraph M.2(1)(e) and did not produce satisfactory evidence to substantiate that its second reason for refusal was justified. This was unreasonable behaviour that resulted in the applicant incurring unnecessary expense at appeal contesting the second refusal reason. This finding applies even though I was ultimately unable to consider granting prior approval for Flat 2 due to recent building operations.
6. For the above reasons, whilst objections to a scheme previously indicated to be acceptable were not persisted with by the Council, and development was not delayed that should clearly have been granted prior approval, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. A partial award of costs is therefore justified.

Costs Order

7. 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 the Royal Borough of Windsor and Maidenhead shall pay to Mr Malkit Purewal on behalf of MSHR Capital LLP the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred by the applicant in contesting the Council's second reason for refusing to grant prior approval; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Smith

INSPECTOR