

Costs Decision

Inquiry Held on 2, 3, 4, 5 August 2022

Site visit made on 5 August 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/B0230/W/3294931 Lea Halls, Bute Street, Luton, LU1 2WJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Luton Halls Properties Ltd for a full award of costs against The Council of the Borough of Luton.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the conversion and change of use of student accommodation (Sui Generis) to 132 flats (52 one bedroom, 40 two-bedroom, 36 three-bedroom and 4 four-bedroom), together with construction of new entrance canopies added to existing buildings and alterations to parking provision, boundary treatments, lighting, cycle stores, bin stores, landscaping, public realm works, after demolition of existing on-site warden bungalow.
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Decision

1. Partial costs are awarded as set out in the terms below.

The submissions for Luton Halls Properties Ltd

2. The Council refused a proposal which plainly should have been granted. They misapplied and misunderstood their own Development Plan. Policies LLP3, LLP11 and LLP15 support the proposal. The Local Plan does not require mixed use or other criteria on each site. It is not the correct approach in the town centre and the Council have not considered the town centre as a whole.
3. The Council have misunderstood and/or ignored most of the masterplan framework. It supports the re-use of existing buildings.
4. In terms of character and appearance, the Council failed to recognise that design and layout are not a legitimate consideration in a change of use proposal. Compulsory Purchase Powers should not be contemplated to stop a logical change of use. The Council complained about density without demonstrating the point. The layout is efficient.
5. The values for an alternative scheme were not realistic. It was also not correct to attempt to allocate the site through a masterplan.
6. The Local Plan allows for communal space in lieu of private balconies. Indeed, balconies would be problematical for family housing such as this.
7. In terms of education contributions, the Council has not demonstrated a lack of capacity or the need for a contribution. Their approach is not robust. The

appellant approach the Council on numerous occasions for information which was not provided.

The response by the Council of the Borough of Luton

8. The Council was entitled to refuse an application for the reasons given. The decision notice sets out the relevant local plan policies and references to the National Planning Policy Framework (the Framework).
9. The masterplan framework was a material consideration, on which the Council placed significant weight. The case did not stand or fall on the issue of the status of the masterplan; rather the critical issue was whether the proposal was in conflict with the local plan and the Framework.
10. There was disagreement on the interpretation and application of policies. This is a legitimate and an expected aspect of an inquiry. It is not arguable that the Council did not understand its own policies rather it disagreed.
11. The Council robustly defended the reasons for refusal. It did not act unreasonably and made a legitimate decision.

Reasons

12. The Planning Practice Guidance 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.
13. The decision notice sets out the relevant Local Plan policies and those in the Framework. The Council elaborated on them in their written evidence and at the Inquiry. The Council was consistent in its application of these policies.
14. The Council considered the relevant policies and explained their particular view on the need for mixed use on the site. Whilst I did not agree with that view, case law has established that the interpretation of these policies is a matter for the decision maker. Consequently, the Council was entitled to arrive at this view. The need for potential re-development was explained and the Council had regard to the relevant policies.
15. The masterplan framework was not quoted in the decision notice. In this respect it did not drive the consideration of the proposal or attempt to trump the Development Plan. It was used in support rather than leading the Council's approach. It also warranted some weight.
16. The Council's concern about the inadequate living standards was due to the lack of balconies. These would have provided some outdoor space readily accessible to the occupants, particularly to sit out, without having to use stairs and lock doors. Whilst I disagreed about this necessity and found the policy allowed for flexibility in particular circumstances, balconies were their preference and a valid consideration.
17. Whilst the proposal is for the change of use of buildings, nonetheless there were potential effects on the character and appearance of the area as well as the effect on the town centre. These effects are matters of judgement and not a precise science and the Council were entitled to come to their view. Bearing in mind the location of the site and the need for regeneration these warranted particular consideration.

18. The lack of an education contribution was part of the third reason for refusal in the decision notice. The need was disputed in the run-up to the inquiry and during preparation of the planning obligation. It warranted the appellant calling an expert witness.
19. The appellant provided up to date and clear details of the existing capacity of schools in the catchment area of the appeal site. This was confirmed by a search on the Council's web site. The catchment area for the appeal site and the available capacity of those schools to meet the pupils arising from the proposal were not countered by the Council at the Inquiry.
20. Furthermore, the Council stated in evidence that the contribution would go to named schools which are outside the catchment area of the appeal site. Moreover, it was not demonstrated how the intended works would expand the capacity at those schools.
21. I therefore find that based on the evidence before the Inquiry, the schools in the catchment area have capacity for the additional pupils arising from the development and the suggested contributions would not be related to the impact of this particular proposal. It was not demonstrated whether the contribution was necessary to make the development acceptable in planning terms, was directly related to the development and whether it was fairly and reasonably related in scale and kind to the development.
22. For the above reasons the education contributions on several grounds fail the tests in the CIL Regulations, which are clearly worded and long standing. Whilst the Council referred to the criterion of improving quality of facilities in the SPD, that pre-dated the CIL Regulations. Indeed, the Framework at paragraph 57 reiterates such tests, which shows their importance. Moreover, Policy LLP39 specifically refers to the need to consider existing capacity.
23. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing a planning application and failure to produce evidence to substantiate each reason for refusal on appeal.
24. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has in part been demonstrated and that a partial award of costs is justified in terms of the requirement for education contributions.

Costs Order

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 Council of the Borough of Luton shall pay to Luton Halls Properties Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the education contributions; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to The Council of the Borough of Luton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Longmuir INSPECTOR