



Costs Decision

Inquiry Held on 10-12 January 2023

Site visit made on 9 and 12 January 2023

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 February 2023

Costs application in relation to Appeal Ref: APP/Q4625/W/22/3306643 281 Stratford Road, Shirley, Solihull B90 3AR

- 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 the MACC Group for a full award of costs against Solihull Metropolitan Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential based mixed-use development comprising 88 C3 residential apartments, 84 bed C2 care home, ancillary commercial uses including gym, salon and restaurant with public access and basement car park providing 126 spaces as well as landscaped courtyards, frontage visitor car park and site landscaping. New vehicle access from Solihull Road.
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Decision

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

The submissions for the MACC Group

2. The refusal of planning permission was unreasonable because no substantive evidence was provided to support it. The Council's urban design witness` confirmed that the existing building harmed the character and appearance of the area. It agreed that the architectural style of the area was varied and that in these terms it needed a lift. It did not dispute that the site marked the natural southern end of the High Street or that it would be appropriate to mark this with a taller building. It had no objection in principle to a building taller than its neighbours. With these concessions established, the Council's assertions of harm were vague and generalised, contrary to the *Planning Practice Guidance*.
3. The Planning Committee did not even consider the application of the tilted balance. Even considering some harm it could not reasonably be said that the proposal would be so harmful to the character and appearance of the area that it significantly and demonstrably outweighed the very substantial benefits.
4. The refusal of planning permission was unreasonable. Further or in the alternative, the Council's vague and general assertions were unsupported by objective analysis. There was no definition of harm in its design evidence just an assertion that the building was bigger and the vague generalisation that it was out of context. The failure to provide substantive evidence was itself unreasonable. This has resulted in the unnecessary cost of pursuing an appeal and a full award of costs is justified accordingly.

The response by Solihull Metropolitan Borough Council

5. The Council's urban design witness made a careful analysis that demonstrated the harmful nature of the appeal scheme and why that harm was substantial. Reference was made to relevant design parameters, including height, mass and scale. The Applicant's own evidence demonstrated harm and conflict with policy P15 in the Local Plan. There is no justification for the allegation that the Council had relied on vague and generalised assertions.
6. The Council's planning witness explained the planning balance exercise and the weight to be given to each factor. That did not contain vague or generalised assertions.
7. The Council's refusal of planning permission was justified and supported by evidence. There was thus no unreasonable behaviour to justify an award of costs.

Reasons

8. 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.
9. It was not unreasonable for the Planning Committee to refuse planning permission contrary to the recommendation of the Planning Officer. At the meeting where the application was considered, the Planning Officer and Head of Planning spoke and provided information about the scheme. This included the benefits and the fact that a tilted balance was to be applied. Whilst members did not raise these matters in the discussion that does not mean that they were not aware of the correct approach when they voted to refuse the application. In any event, at the inquiry the Council's planning witness had clearly followed the correct approach in the face of the Council's housing land supply deficit. He explained his reasoning with regards to the weight given to the harms and benefits and why he considered the former significantly and demonstrably outweighed the latter.
10. The evidence of the Council's urban design witness seemed to me to adequately explain why he considered that the development would not be acceptable on this particular site. He fairly agreed to a number of matters but that does not mean that his opposition to the appeal scheme was not properly justified. To my mind his evidence was neither vague nor generalised but articulated the reasons why the appeal scheme could not be supported on visual grounds. The Council's design case was adequately reasoned, and I have agreed with its conclusions.
11. For these reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the *Planning Practice Guidance*, has not been demonstrated.

Christina Downes

INSPECTOR