

Costs Decisions

Hearing Held on 7 February 2023

Site visits made on 6 and 8 February 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Costs application 1 in relation to Appeal Ref: APP/X1545/W/22/3309927 Former Hasler's Mill, Station Road, Maldon CM9 4LQ

- 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 Maldon District Council for a partial award of costs against Mr A Wiseman.
 - The appeal was against the refusal of planning permission for the demolition of former mill, erection of two blocks each accommodating four Class E units, conversion of former Granary into four Class E units and the erection of a block of nine apartments and two retail units.
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Costs application 2 in relation to Appeal Ref: APP/X1545/W/22/3309927 Former Hasler's Mill, Station Road, Maldon CM9 4LQ

- 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 A Wiseman for a partial award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for the demolition of former mill, erection of two blocks each accommodating four Class E units, conversion of former Granary into four Class E units and the erection of a block of nine apartments and two retail units.
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Decisions

1. The applications for costs are refused.

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 or wasted expense in the appeal process.

Costs application 1

3. In this application the Council seeks a partial award of costs on the grounds that the appellant acted unreasonably in disputing four reasons for refusal where there was no realistic prospect of success. This led to unnecessary expense being incurred to deal with these matters at appeal.
4. Reason for refusal 1 relating to affordable housing was based on Policy H1 of the Maldon Local Development Plan 2017 (the MLDP) which requires a contribution in the case of residential developments exceeding 1,000 sq m. However, this part of the policy is out of date due to the subsequent publication

of a revised National Planning Policy Framework (NPPF) and it was not therefore unreasonable for the appellant to dispute the matter at appeal.

5. Reason for refusal 4 relates to the allocation of the site for employment purposes in MLDP Policy E1. However, that policy also allows scope for mixed use developments in certain circumstances and although these have been found not to apply in this case it was not unreasonable for the appellant to pursue a mixed use including housing at appeal.
6. Reason for refusal 5 refers to the conflict with national and local policy in respect of the sequential test to manage future flood risk. Whilst pursuing the matter was the closest to unreasonable behaviour, the appellant's argument that the MLDP allows for mixed use development on the site and thus the test was passed at plan making stage was plausible albeit flawed in this instance.
7. Reason for refusal 8 relates to the lack of a financial contribution towards the implementation of the North Quay Regeneration Strategy. However, the Council failed to put forward a substantive case to establish that a contribution would meet the three tests set out in paragraph 57 of the NPPF and it was not therefore unreasonable for the appellant to dispute the matter at appeal.
8. I therefore find that the appellant behaved reasonably in pursuing these reasons for refusal at appeal and that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Costs application 2

9. In costs application 2, the appellant seeks a partial award of costs on the grounds that the Council acted unreasonably in describing the site as allocated for employment development in MLDP Policy E1 as opposed to designated for employment. As a result, the Council applied the wrong paragraph of the NPPF and failed to apply the criteria in the policy for considering proposals which cause the loss of employment uses.
10. Contrary to the appellant's view, the two terms allocated and designated for a use have the same meaning and the use of one rather than the other did not lead the Council into error¹. The Council simply disagreed that the site would have a greater benefit to the local community if the proposal were permitted, the most relevant criterion in this case. This was an arguable position to take and thus not unreasonable to pursue it at appeal.
11. I therefore find that the Council behaved reasonably in refusing the application and that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Conclusion

12. For these reasons neither of the applications for costs should succeed.

David Reed

INSPECTOR

¹ The policy actually says reserved for employment development, another equivalent term.