



Costs Decision

Site visit made on 1 February 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Costs application in relation to Appeal Ref: APP/U2235/W/22/3298952 Land Adjacent to Royal Engineers Road, Maidstone, Kent, ME14 1AE

- 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 Weston Homes PLC for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of the Council to grant approval of the balcony details submitted pursuant to condition No 6 of planning permission Ref 18/502791/FULL.
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Decision

1. The application for costs is allowed in the terms set out below.

Preliminary Matter

2. The applicant considers that condition No 6 (the condition) is not necessary or precise and thus fails the tests outlined within the National Planning Policy Framework. Nevertheless, the appeal before me is not one against the condition itself. Therefore, the tests of necessity and precision do not form part of my considerations.

Reasons

3. Irrespective of the outcome of appeal, the Planning Practice Guidance (PPG) indicates that costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The applicant submits that the Council has exhibited unreasonable behaviour in relation to both procedural and substantive matters.
4. The Council refused application 21/502827/SUB (the appeal proposal) which sought approval of details pursuant to condition No 6 of 18/502791/FULL which reads "Prior to the first installation of any balconies or balustrade on Block B, large scale detailed drawings including sections shall be submitted to and approved by the Local Planning Authority. The details shall include any privacy screens and be installed as approved." The Council's reason for refusal indicates that the proposed details of painted steel flat bar railings to every balcony of the appeal building would be a significant detrimental change when viewed cumulatively with the approved amendments to the originally approved scheme.
5. In determining 18/502791/FULL, the Council's evidence indicates that the main parties failed to reach a conclusion on the design of the proposed balconies despite protracted negotiations. Therefore, in the interests of expediency and to ensure that the design quality of the scheme was not gradually diminished, condition No 6 was imposed as a mechanism to facilitate further design discussions following the grant of permission.

6. Notwithstanding the above, it is noted that the details submitted pursuant to the condition are consistent with the external materials specification included within Appendix 3 of the modified Section 106 agreement. Therefore, whilst I recognise the Council's desire to maintain the original architectural concept and the intended purpose of the condition, it appears to me that there is already agreement regarding the installation of metal balconies. Thus, in refusing to discharge the condition on the grounds stated above, I find that the Council delayed development contrary to the PPG and thus exhibited unreasonable behaviour.
7. The applicant contends that the need for the appeal could have been avoided had the Council been willing to properly consider the justification submitted in respect of the amended proposals. Following an initial review of the detailed drawings and sections submitted pursuant to the condition, I understand that the Council requested that a narrower railing be considered. These details were subsequently submitted by the applicant. Whilst acknowledging an improvement in the amended details, the Council in their response requested that further consideration be given to the provision of glass balustrades as originally consented¹. Technical justification aside, given my findings above regarding the Section 106 agreement it appears to me that the Council's requests were unjustified and demonstrated a lack of co-operation amounting to unreasonable behaviour.
8. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Maidstone Borough Council shall pay to Weston Homes PLC, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Maidstone Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

H Wilkinson

INSPECTOR

¹ 16/507471/FULL