



Costs Decision

Hearing held on 16 and 17 May 2023

Site visit made on 17 May 2023

by C Masters MA (Hons) FRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Costs application in relation to Appeal Ref: APP/T0355/W/22/3309308 Mattel House, Vanwall Road, Maidenhead, SL6 4UB

- 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 Bellway Homes for a partial award of costs against the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of the existing building and construction of 91 residential units together with associated landscaping, car parking and infrastructure works.
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Decision

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

The submission for Bellway Homes

2. The costs application was submitted in writing and is not repeated here. The appellant contends the Council acted unreasonably in relation to the issue of the loss of employment floorspace. Namely, the marketing evidence was largely ignored by the Council which ultimately led to the appellant appealing for non-determination. It was unreasonable for the Council to outsource an understanding of their own policies and what that means in the context of marketing evidence, and then ignore their own consultants' conclusions without explanation.

The response by the Royal Borough of Windsor and Maidenhead

3. The response was made orally at the hearing. In summary, the Council set out that there was no dispute that the loss of employment floorspace was a critical issue and that policy ED2 requires marketing evidence to be submitted to demonstrate an exceptional case. The Council offered the appellant the opportunity for an independent review of the marketing evidence in August 2022 however the offer was declined. The appellant did not seek to agree the marketing strategy before submission of the application. It was an acceptable approach for the Council to inform a view and seek advice from independent consultants. The matrix supplied sets out an expression of the policy basis and was not completely made up but was grounded in appendix D of the development plan. If the appellant thought this approach was flawed they should have said so. The level of compliance with the matrix is a matter of professional judgement.

4. AspinallVerdi were not appointed to see how the Council should interpret policy but to review the background and assess the marketing campaign and its compliance with policy. The Council have worked proactively since the submission of the appeal, through meetings and the statement of common ground. There have been no costs wasted.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process or substantive – relating to the issues arising from the merits of the appeal.
6. Policies ED2 and ED3 of the Royal Borough of Windsor and Maidenhead Local Plan refer to the requirement for marketing evidence to be submitted in accordance with the guide set out at appendix D. The Council appointed AspinallVerdi to assist with this matter. I take no issue with the Council seeking external professional advice in relation to the marketing evidence submitted. I also see no issue with a Council subsequently disagreeing with that advice if there are sound and compelling reasons for doing so. However, this was not the case here.
7. The advice of AspinallVerdi was clear, that the marketing strategy met the fundamental policy requirements of policies ED2, ED3 as well as appendix D. Nevertheless, the Council's continued position that the marketing exercise undertaken was insufficient and not robust was completely without merit and totally at odds with the professional advice they had engaged themselves. The failure of the Council to properly resource the hearing with a policy officer who had been directly involved with briefing and engaging with AspinallVerdi was regrettable and in my view added a further dimension of unreasonable behaviour.
8. In addition, it was also unreasonable behaviour for a '35 point matrix of policy requirements' to be produced. This approach added a further layer of complication to what should have been a relatively straightforward matter, particularly where the development plan policies are clear in this regard. It generated wasted expense on behalf of the appellant by responding to the matrix instead of focusing on the development plan requirements.
9. I have already concluded within my decision that both parties were at fault for not agreeing the scope of the marketing evidence prior to submission of the application and I am not aware why the offer for an independent review was not taken up. Nevertheless, the Planning Practice Guidance is clear that the aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delays.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary and wasted expense has occurred in respect of the issue concerning the loss of the employment floorspace and a partial award of costs is therefore justified.

Costs Order

11. 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 Bellway Homes, the costs of the appeal proceedings described in the heading of this decision [limited to those costs incurred in relation to the issue of employment floorspace]; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to the Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Masters

INSPECTOR