



Costs Decision

Hearing held on 1 August 2023

Site visit made on 1 August 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Costs application in relation to Appeal Ref: APP/T0355/W/22/3313643 Maidenhead Spiritualist Church, York Road, Maidenhead SL6 1SH

- 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 Shanly Homes Limited for a full award of costs against Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of planning permission for the construction of 49 No. apartments with associated parking and landscaping following demolition of existing building.
-

Decision

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

The submissions

2. The costs application and response by the Council was submitted in writing. The Applicant's final response was made orally at the Hearing and generally confirmed their position.

Reasons

3. 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.
4. The planning application was refused by the Council's Development Management Planning Committee, contrary to the officer's recommendation for approval. Whilst the Committee were not bound to accept the officer recommendation, the PPG states that examples of unreasonable behaviour by local planning authorities that risk an award of costs include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The first reason for refusal relates to the lack of affordable housing provision. The Council's officer's report explains that the Council's independent Viability Assessors reviewed the Applicant's Viability Statement and concluded that the proposal would result in a deficit. The report went on to say that subject to a legal agreement securing a review mechanism, the scheme is considered acceptable.
6. The reason for refusal states that the application failed to provide affordable housing to meet the needs of the local population contrary to Borough Local Plan 2013 – 2033 Policy HO3. This harm was considered to have substantial weight and the evidence provided to justify the lack of affordable housing provision was not considered to outweigh this harm. As stated in the PPG, the weight to be given to

a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. In addition, while the supporting text for the Policy allows the submission of viability appraisal information in exceptional circumstances, as the proposal would not provide affordable housing, it would conflict with the wording of the Policy itself. Therefore, the Council did not behave unreasonably in this respect.

7. The Council did not defend the reason for refusal during the appeal process after the committee was presented with an updated viability assessment and the Council's Independent Viability Assessor's response. The Council's decision not to defend the reason for refusal during the appeal process was therefore not unreasonable.
8. The remaining reasons for refusal relate to the effect on the watercourse and living conditions of neighbouring occupiers. The Council's housing land supply position changed during the course of the appeal such that it could no longer demonstrate a five year supply of housing. The applicant considers that the Council behaved unreasonably by not reassessing the issues in light of paragraph 11d of the National Planning Policy Framework after assessment of the updated viability information.
9. However, the Council's position with respect to the second and third reasons for refusal did not change during the appeal process. In addition, the planning balance was discussed with the main parties during the Hearing. Therefore, the Council did not behave unreasonably in this respect.
10. A number of other schemes near the appeal site were granted planning approval by the Council. However, the other schemes within the allocation area were determined under the previous development plan and are therefore not directly comparable to the appeal site. In any event, each case must be determined on its individual merits and the Council therefore did not behave unreasonably in this respect.
11. With respect to the waterway, the Environment Agency's evidence sets out that the scheme would result in the loss of riparian habitat. In terms of privacy, the scheme would meet the minimum separation distances set out in the Design SPD. However, as the document provides guidance and the separation distances are not set out in the policies, the Council did not behave unreasonably with respect to these issues.
12. Accordingly, I consider that the Council has not failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision.

Conclusion

13. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Sabu INSPECTOR