



Costs Decision

Site visit made on 30 January 2024

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2024

Costs application in relation to Appeal Ref: APP/U2235/W/23/3324046 67 St Peters Street, Maidstone ME16 0SN

- 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 Urban Enhance Ltd for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of outline planning permission (all matters reserved except for access) for demolition of existing buildings and creation of a mixed use commercial and residential redevelopment, comprising 3 no. commercial units (Use Class E) and 75 no. 1 and 2-bed apartments, with two new accesses.
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Decision

1. The application for a full award of costs is not allowed but a partial award is made in the terms set out below.

Reasons

2. The application is made on both procedural and substantive grounds.

Procedural grounds

3. The applicant argues that the Council should have continued to negotiate rather than refusing the application. However, the question of whether to negotiate on an application, or determine it, is a matter of planning judgement for the local planning authority to make. In general terms, the Council's decision to determine the application was not unreasonable. Moreover, in my appeal decision I have agreed with some of the Council's objections to the appeal proposal and I have dismissed the appeal. This is not a case where the appeal could have been avoided if the Council had continued to negotiate.
4. However, there was procedural unreasonableness in relation to Reason 7 (highways). The appellant had submitted further information which dealt with the residual concerns of the highway authority before the application was determined. There is no evidence that the Council consulted the highway authority on this information, or that the information was considered at all.
5. The Council's statement of case suggested that the proposal could harm the operations of established businesses, in the event that new residents raised complaints about noise or disturbance from those businesses. This was an entirely new matter that had not been referred to in the reasons for refusal. In effect, the Council was introducing a new reason for refusal. That was unreasonable behaviour.
6. The applicant submits that the Council placed too much emphasis on the development potential of adjoining land and did not acknowledge the outline nature of the scheme. The weight to be attached to the effect on the

development potential of the Jewsons premises is a matter of planning judgement. For reasons given in my appeal decision, I consider that it is a relevant matter to take into account. Whilst I have not agreed with all of the Council's points, I do not think it was inherently unreasonable to take this matter into account. Nor do I think that the Council failed to recognise the outline nature of the application. The officer's report makes it clear that the drawings were illustrative. The Council's approach was to have regard to the illustrative drawings to help assess whether the quantum of development for which permission was sought could be accommodated in a satisfactory way. My appeal decision takes the same approach.

7. Suggested planning conditions should have been provided with the Council's statement. In the event, the Council asked for some extra time to submit the suggested conditions. This request was accepted by the Planning Inspectorate, and the appellant was given an opportunity to comment on the suggested conditions, without any impact on the overall progress of the appeal.
8. The Council's first reason for refusal was not well-written, in that it did not expressly refer to affordable housing. However, the first reason for refusal did allege conflict with Policy SP20 which deals with affordable housing. The appellant was aware of the importance of this policy, having addressed it in the Planning Statement.
9. The appellant also alleges procedural unreasonableness in relation to flood risk. To my mind that is more a matter of substance, which I will return to below.

Substantive grounds

10. For reasons given in my appeal decision, I have dismissed the appeal. This is not a case where the Council has prevented development which should have been permitted. A full award of costs is not justified.
11. The fourth reason for refusal alleged harm to the setting of a listed building. The officer's report suggested that the proposal would not be "*subservient*" to the listed building. That was a generalised assertion which was not backed up by any proper analysis. This matter was not mentioned at all in the Council's statement of case. I consider that the Council failed to substantiate this reason for refusal.
12. The fifth reason for refusal related to flood risk and the application of the sequential test. The Council's statement of case said that it was undertaking consultations regarding the need for "*a second sequential test.*" The Council's supplementary statement of case contradicted this, saying that re-consultation was "*not deemed to be necessary.*" The Council has not produced cogent evidence to address the appellant's central point, which was that a Strategic Flood Risk Assessment has been carried out in support of the LPR and that the Council is promoting mixed use development on this site in the light of that assessment. I consider that the Council failed to substantiate this reason for refusal.
13. The sixth reason for refusal related to the absence of a surface water drainage strategy. In my appeal decision I have noted that the proposal would reduce the amount of impervious surface area, thereby reducing runoff, and that there was no reason why details of surface water drainage could not have been controlled by a planning condition. This did not need to be a reason for refusal.

14. The seventh reason for refusal related to highway safety. I have commented above on the Council's unreasonable behaviour in procedural terms. The highway authority has confirmed that, having considered the additional information submitted, it would not support a reason for refusal on grounds of highway safety. This matter was not mentioned in the Council's statement of case. The Council has therefore failed to substantiate this reason for refusal.
15. I have commented above that the allegation that the proposal could harm the operations of established businesses, in the event that new residents raised complaints about noise or disturbance from those businesses, had not been referred to in the reasons for refusal. Moreover, the point was unsubstantiated. In my appeal decision, I have attached limited weight to the Council's submissions relating to the agent of change principle, given the lack of evidence that any existing businesses would have a harmful effect on future occupiers of the appeal site.

Conclusions

16. For the reasons given above, a full award of costs is not justified in this case. However, I have gone on to consider whether a partial award is justified. I have concluded that there was unreasonable behaviour, in procedural terms, in relation to reason for refusal number 7 and in the introduction of a new allegation that the proposal could harm the operations of existing businesses.
17. I have also found that there was unreasonable behaviour in substantive terms. The Council failed to produce evidence to substantiate reasons for refusal numbered 4, 5 and 7 and the allegation that the proposal could harm the operations of existing businesses. Reason for refusal number 6 related to a matter that was capable of being covered by a condition.
18. The unreasonable behaviour caused the appellant to incur unnecessary expense in the appeal process because the appeal statement and final comments were longer and more complicated than they needed to be. This would have resulted in additional professional time being spent.

Costs Order

19. 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 Urban Enhance Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to reasons for refusal numbered 4, 5, 6 and 7 and in responding to the allegation that the proposal could harm the operations of existing businesses; such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. 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.

David Prentis

Inspector