



Costs Decision

Hearing held on 24 October 2023

Site visit made on 25 October 2023

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

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Costs application in relation to Appeal Ref: APP/Y0435/W/23/3317652 Eagle Farm, Cranfield Road, Wavendon, Milton Keynes MK17 8AU

- 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 McCann Homes for a partial award of costs against Milton Keynes Council.
 - The appeal was against the refusal of planning permission for part demolition and part conversion of existing buildings to provide 6 residential dwellinghouses (Use Class C3), and construction of 13 new residential dwellinghouses (Use Class C3), with associated car and bicycle parking, internal access roads and landscaping, and other associated works.
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Decision

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

Reasons

2. 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.
3. The Council withdrew the part of the first reason for refusal regarding employment land in response to information submitted by the Applicant during the appeal. The Applicant had provided, during the application stage, some information from a surveyor setting out photographs of the existing building and stating that they are not in marketable condition.
4. During the appeal process further details such as an assessment of the cost to refurbish the units for alternative use and EPC certificates were submitted. The Council were satisfied that this evidence provided adequate justification for the lack of marketing. This was a matter of planning judgement, and the Council has not behaved unreasonably in this respect.
5. In terms of Vacant Building Credit (VBC), the additional evidence provided during the appeal included emails from previous tenants confirming the evidence provided during the application process regarding the timing and reason for vacating the units. The issue of whether the evidence demonstrates that the premises were not left vacant for the reason of redevelopment and thus whether VBC applies is a matter of planning judgement and the Council has not behaved unreasonably in this respect.

6. Turning to the reason for refusal relating to access, the planning officer's report refers to an outstanding objection due to the lack of pedestrian footpath to the play area to the north of the site. In addition, the Highway Authority's appeal statement sets out that a cycle and pedestrian connection to the Redway to the north and a contribution to the delivery of that last section of Redway would be welcome.
7. However, the Council did not pursue the matter of the contribution towards the delivery of the last section of Redway and connection to the play area to the North during the appeal. Therefore, even if there was unreasonable behaviour in this respect, it has not led to wasted expense in the appeal process.
8. Although the pedestrian and cycle link within the red line boundary was noted on the drawings, the route outside the site within the Wavendon Lodge Mews site was not highlighted in the evidence. While the route passing through the adjacent approved development may have been clear to the Applicant, the precise route was not expressly noted in the submitted drawings until the hearing. In any event, whether or not these matters could be dealt with by condition, including relating to land outside the site is a matter of planning judgement and the Council has not behaved unreasonably in this respect.
9. Policy DS5 of Plan:MK 2016 – 2031 Adopted March 2016 relates to the open countryside which is a policy designation. The Policy sets out a number of criteria for development in the countryside which the Council assessed and concluded that the proposal would not meet.
10. As set out in the supporting text of the Policy, one of the objectives of the policy is to provide a vision for development proposals on land outside of the defined settlement boundaries. It also recognises the importance of safeguarding the character of the open countryside. Notwithstanding this, the wording of the Policy itself does not require an assessment of the effect on character of the countryside to be made for change of use schemes or new dwellings that are not of exceptional quality.
11. An assessment of the effect of the scheme on the character of the area was made in the planning officer's report and the Council's Appeal Statement makes clear that any benefits associated with the proposal would not outweigh the Policy conflict. Therefore, the Council has not behaved unreasonably in this regard.
12. I note the comments regarding consultation with the Lead Local Flood Authority (LLFA). Although informal consultations may have taken place between the Council and LLFA, from the evidence, no substantial or new issues were raised that would have prejudiced the Applicant or denied them an opportunity to respond. Moreover, the LLFA were represented at the hearing and appeared alongside the Council. Therefore, even if any unreasonable behaviour had occurred in this respect, it would not have altered the reason for refusal and the Applicant would have incurred expense in addressing this issue at appeal in any event.
13. With respect to the approach taken in terms of drainage for the adjacent site, each case must be determined on its own merits and given the particular drainage conditions of the site, the two cases are not directly comparable and the Council has not behaved unreasonably in this respect.

14. Regarding the non-designated heritage asset, the conservation officer stated that the scheme was acceptable in principle but requested further details. However, the planning officer, as the decision maker, was entitled to make a planning judgement that the lack of sufficient information warranted a reason for refusal on this basis. The Council has therefore not behaved unreasonably in this respect.
15. Overall, although I have come to a different view in some respects, the reasons for the refusal set out in the decision notice are complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would be in conflict with, in their view. These reasons have been adequately substantiated in the Council's statements submitted as part of the appeal and at the hearing.
16. 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. The Applicant had to address those concerns in any event.

Conclusion

17. 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