



Costs Decision

Hearing held on 24 and 25 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 Milton Keynes Council for a partial award of costs against McCann Homes.
 - The appeal was against the refusal of planning permission for part demolition and part conversion of existing buildings to provide 6 residential dwelling houses (Use Class C3), and construction of 13 new residential dwelling houses (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 first reason for refusal relates to a failure to provide sufficient marketing information to demonstrate that there is no longer a viable employment use for the buildings associated with the site.
4. Policy ER2 of Plan:MK 2016 – 2031 Adopted March 2016 states that applicants must demonstrate through evidence, including marketing of the site, that there is no longer a reasonable prospect of it being used for the existing or designated employment use. It goes on to say that applicants must also demonstrate that the continued use of the site for employment purposes is no longer viable, taking into account the site's existing and potential long-term market demand for an employment use.
5. The Appellant submitted information during the application process including a letter from a surveyor with photographs of the buildings on the site concluding that the premises are not in marketable condition. An updated statement of case by the same surveyor submitted during the appeal included assessment of employment spaces in Milton Keynes, the costs to refurbish the existing units for an employment use, and EPC certificates which demonstrate that some of the units do not meet the requirements for marketing.
6. It is unclear why this evidence was not submitted during the application process. However, the evidence substantiates the Appellant's previous position

and does not alter the scheme itself. In addition, the acceptability of evidence as justification for lack of marketing is a matter of planning judgement. Therefore, it was not unreasonable for the Appellant to seek to address this issue through the submission of evidence at appeal.

7. With respect to Vacant Building Credit, information was provided during the appeal process which resulted in the Council withdrawing the second reason for refusal. This information largely substantiates evidence provided at application stage including emails between the parties and does not alter the appeal scheme itself. As such the Appellant has not behaved unreasonably in providing evidence to clarify matters at appeal stage.
8. E-mails from previous tenants of the units were submitted during the appeal which confirm the position set out in the Planning Statement submitted with the application and in e-mails between the parties. As such, this evidence confirms the Appellant's position and has not altered the scheme. Therefore, while I accept that the Council were required to submit two statements at appeal, the submission of this evidence does not amount to unreasonable behaviour.
9. Turning to the third reason for refusal regarding pedestrian and cycle paths to the surrounding area, the point within the red line boundary where the link would be taken was clearly indicated on a number of the submitted drawings both at application and appeal stage.
10. Drawings were submitted during the hearing which demonstrate that the proposed route would pass through the Wavendon Lodge Mews site to the south of the appeal site and on to approved footpaths. Although the drawings indicating the route outside the site was not provided during the application process, they confirm the statements made by the Appellant in their evidence that the route would connect to the Wavendon Lodge Mews development and to the Strategic Land Allocation beyond. Accordingly, the Appellant has not behaved unreasonably in this respect.
11. The Appellant considered that the issue could be dealt with through the use of a condition. This is a matter of planning judgement, and the Appellant has not behaved unreasonably in this regard.

Conclusion

12. 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