



Costs Decision

Site visit made on 16 February 2024

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2024

**Costs application in relation to Appeal Ref: APP/T0355/W/23/3329117
The Arcade, High Street, Cookham, Maidenhead, Windsor and Maidenhead
SL6 9TA**

- 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 Mr Jolyon Burgess for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
- The appeal was against the refusal of the Council to grant planning permission for use of building for office space.

Decision

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

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 applicant for costs to incur unnecessary or wasted expense in the appeal process. The PPG also provides examples where a local planning authority may be at risk of a substantive award of costs. These include if it fails to substantiate each reason for refusal at appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
3. In this case, the decision on the application was made by the Council's Development Management Committee (the Committee) against the advice of its planning officers. Whilst the Committee is entitled to make decisions that are contrary to the officer recommendation, there is an expectation that, where this occurs, it should be demonstrated that the decision has been based on sound, substantive and defensible evidence at appeal.
4. Although the Council's reasons for refusal refer to conflict with development plan policies and the Cookham Village Design Statement, the Council has provided very limited evidence to substantiate its concerns.
5. In its first reason for refusal, the Council refers to the Cookham High Street Conservation Area (CA) as 'predominantly residential in this location'. However, a reasonable objective analysis of the site context would account for the proximity of the appeal site to the Cookham Arcade and the High Street which, notwithstanding the presence of dwellings, has a mixed character with a strong commercial element. The Council's description of the site context, upon which it based its conclusions, is therefore inaccurate.

6. The Council has also referred me to the absence of a heritage statement prepared by a heritage consultant. However, in this instance and given the small-scale of the proposal and the lack of significant external alterations to the appeal building, a heritage statement would be disproportionate and is not necessary to understand the impact of the proposal on the significance of the CA. Moreover, even if a heritage statement were proportionate, the Council has based its identification of harm to the significance of the CA on a vague statement about 'increased commercialisation and associated activity'. In the absence of meaningful elaboration in the appeal evidence, the reasoning behind this conclusion is unclear.
7. I have also been referred to the absence of a transport or highways impact assessment to demonstrate the effect of the development on demand for parking and the impact on the local highway network. However, due to its modest scale, the application included sufficient details to enable a reasonable assessment on these matters to be made. Moreover, the Council has not satisfactorily substantiated why the development would necessitate a departure from local parking standards. This is particularly pertinent given that the local parking standards are directly referenced in Policy IF2 of the Borough Local Plan 2013-2033 as a guide for determining the appropriate level of parking for development proposals.
8. Policy IF2 of the LP includes a longer list of requirements beyond those relating to parking. I have set out in my decision letter the criteria that are relevant to the Council's second reason for refusal, which relates to parking provision and highway safety. Therefore, I do not find it necessary for the applicant to address the remaining criteria. Moreover, from the evidence before me, the Council did not consider whether the perceived harm to parking and highway safety could be mitigated through the use of conditions, including measures to encourage travel by sustainable modes given the accessible nature of the site.
9. Overall, I consider that the Council's reasons for refusal contained vague and generalised assertions about the proposal's impact that have not been satisfactorily substantiated as part of the appeal process. This amounts to unreasonable behaviour as described in the PPG and has caused the applicant to incur unnecessary expense in contesting the appeal. A full award of costs is therefore justified.

Costs Order

10. 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 Council of the Royal Borough of Windsor and Maidenhead shall pay to Mr Jolyon Burgess, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council of 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.

E Catchside

INSPECTOR