

Costs Decision

Site visit made on 11 December 2023

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2024

Costs application in relation to Appeal Ref: APP/E0345/W/23/3315618 220 Elgar Road South, Reading RG2 0BW

- 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 Maxika Homes for a full award of costs against Reading Borough Council.
 - The appeal was against the refusal of planning permission for a residential redevelopment comprising demolition of existing single storey building and erection of 16 dwellings together with associated works- revised scheme following the refusal of application 210526.
-

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 party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. Unreasonable behaviour may include failure by the planning authority to substantiate a stated reason for refusal of planning permission or relate to a procedural process. Whilst the application was presented to Committee with a recommendation of approval, it is entirely within the gift of Members to disagree with Officer advice. However, notwithstanding that the weight given to development policies is a matter for the decision maker, the PPG also sets out that the planning history of a site may be a relevant consideration in the determination of an application.
5. In relation to the first reason for refusal - Housing Mix, it is noteworthy that the previous planning application on this site¹ referenced in the description of development, which was for a very similar development, for the same number of 3 bed units, the same housing mix was not considered a reason for refusal by the Council, nor identified as an issue by the Inspector dealing with the appeal² for that application.

¹ Application reference 210526

² Appeal Ref: APP/E0345/W/22/3291067

6. It is not therefore unreasonable for the applicant to assume that this matter was not an issue for concern. It is not demonstrated that matters in relation to the Annual Monitoring Report submitted in the Council's Statement of Case were substantially altered from previous figures, that would give significantly greater weight to this policy requirement.
7. The committee minutes provided are extremely limited and do not set out the case for departing from a sufficiently similar recent substantive decision. Whilst the Council's Statement of Case expands on the case, it mostly explains sets out the policy background that the decision was made on, which is the same as the previous decisions. The reasons given for the departure from previous conclusions are vague and limited and as such, the Council has failed to substantiate this reason for refusing the application. Therefore, I find that such inconsistency of decision making is unreasonable.
8. In relation to the second reason for refusal, outdoor space, again, the Inspector, in considering the previous development on site, considered that this issue could be addressed satisfactory by a financial contribution towards the maintenance and upkeep of Waterloo Meadow. The appeal decision states that this was also the position indicated at the time by the Council. Again therefore, given that a legal agreement to secure such a contribution is submitted with this application, it was not unreasonable for the applicant to assume that this matter had been addressed.
9. Given the similarity of both applications, Members should clearly substantiate the reasons for coming to a differing conclusion on this matter. Whilst LP Policies H10 and EN9 were not referred to in the previous refusal reasons or Inspectors decision, they are referred to in the Officer report for the previous scheme and they are similar to the previously quoted policies that require new development to promote good living conditions for occupiers, through the provision of quality outdoor space.
10. I find again that the case put forward by the Council to be vague and limited. As such the Council has failed to substantiate this reason for refusing the application.
11. The third matter of refusal, given the committee nature of the decision, relating to a lack of completed legal agreement is dependent on the other two reasons for refusal, and is described by the Council as 'a consequential reason.'
12. Accordingly, the applicant's time and expense in defending these matters was not necessary and has resulted in unnecessary or wasted expense on their behalf.
13. In light of the foregoing, I find that unreasonable behaviour, resulting in unnecessary or wasted expense has been demonstrated. A full award of costs is therefore justified.

Costs Order

14. 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 Reading Borough Council shall pay to Maxika Homes, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not

agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

15. The applicant is now invited to submit to Reading 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

B Phillips

INSPECTOR