



Costs Decision

Hearing held on 18-19 June 2024

Site visit made on 19 June 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Costs application in relation to Appeal Ref: APP/Z1510/W/24/3336760 Deals of Kelvedon, Station Road, Kelvedon, Essex CO5 9NR

- 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 Kelvedon Village Developments Ltd for a full award of costs against Braintree District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a development proposal described as 'Demolition of existing buildings, mixed use development comprising 24 residential apartments with ground floor commercial space within Blocks A and B and a retail unit in Block C with associated access, parking and landscaping'.
-

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. In this instance, the application was made in writing and briefly supplemented verbally at the hearing. The applicant submits that the Council's putative reasons for refusal have not stood up to scrutiny and that some could have been addressed through further dialogue and engagement. As aggravating factors, the applicant engaged in pre-application discussions and sought to work with the Council, but only received limited feedback and a protracted assessment which ultimately resulted in the appeal having to be lodged to receive a decision.
4. The PPG explains that the failure to produce evidence to substantiate each reason for refusal on appeal places an authority at risk of a substantive award of costs. Similarly, the reliance on vague, generalised or inaccurate assertions about a proposal's impact, or raising concerns on a planning ground capable of being dealt with by conditions, can also result in an award of costs.
5. Taking the Council's putative reasons for refusal in turn, it is apparent from my formal decision on the appeal that the Council's concerns regarding flood risk, the inadequacy of the financial contribution towards the provision of affordable housing offsite, the effect on the setting of the conservation area, the noise impact from the railway line on outdoor amenity space, the access to Block A

and the lack of parking for the retail unit were properly reasoned and grounded in policy. The Council did not act unreasonably in raising these matters.

6. Similarly, and despite me not sharing its view, the Council's concerns relating to the effect of the proposal on the future occupants of the proposal were broadly well founded as matters of planning judgment, as were the concerns regarding the effect on the living conditions of the occupants of Rosslyn Terrace and the extent of parking.
7. However, during the hearing the Council confirmed that it had not grappled with the applicant's evidence relating to the viability and sustainability of the site as employment land or the lack of public parking at the appeal site. Ultimately, the Council did not seek to defend its concerns on these points. Had they considered the evidence sooner and in detail, then this point could have been resolved before the appeal was submitted. There had been ample opportunity to do so. Accordingly, the Council acted unreasonably, and this behaviour resulted in the appellant being put to wasted expense addressing these points in the build up to the hearing and during it.
8. Similarly, if the Council had approached matters more proactively, then some of the concerns relating to the design of the scheme and the living conditions of future occupants could have been addressed through suitably worded conditions. This being the size of the apartments, which could have been addressed through minor revisions to the floor plans, securing the enclosure of the communal garden, so that it is private space, and safeguarding privacy from certain windows by obscuring the glass. By failing to consider conditions the Council acted unreasonably and put the appellant to unnecessary expense in addressing these points.
9. In conclusion, it is apparent from a reading of my decision on the appeal that most of the Council's concerns were reasonably made and supported by the evidence of experts. However, that was not universally the case. As a result, I find that some of the Council's actions were unreasonable and resulted in wasted expense for the applicant. A partial 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 Braintree District Council shall pay to Kelvedon Village Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the Council's second putative reason for refusal (relating to the loss of allocated employment land and public car parking) and those points that could have been addressed by condition as identified above; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Braintree District 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.

Graham Chamberlain
INSPECTOR