
Costs Decision

Site visit made on 10 December 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Costs application in relation to Appeal Ref: APP/H1515/W/24/3339413 Former Ewing House Car Park, King Edward Road, Brentwood CM14 4HL

- 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 Bar Stone Developments Ltd for a partial award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of existing two tier car park and proposed residential development comprising 35 residential units in a part 6, part 7 storey building, together with associated ancillary facilities including plant enclosure, cycle parking and refuse storage.
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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 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 application for partial costs is made with respect to reasons 3 and 4 stated on the decision notice, which relate to car parking provision and to affordable housing provision respectively. Both parties have made their submissions in writing and therefore it is not necessary to repeat their cases here.
4. Reason for refusal 3 relates to the provision of car parking to meet the needs of the proposed development. This matter centres on whether it is acceptable in highway safety terms for the proposal to be car-free. However, whilst the Transport Statement submitted with the application set out that future residents of the site would not be permitted to obtain car parking permits as part of this, it is not clear that any mechanism was put forward at planning application stage to ensure that this would be the case. It would have been evident to the applicant from the representations made that there was considerable concern from local residents about parking stress.
5. Having set out the parameters as to how the proposed development would be defined as car free, it was for the applicant to be able to secure this. Alternatively, they could have sought to demonstrate that there was not a level of parking stress in the area which might be exacerbated if further parking permits were issued, and no resultant likelihood of inappropriate parking and harm to highway safety. Neither option was seemingly pursued and therefore the Council was not unreasonable to include reason 3 on the decision notice.

6. Reason for refusal 4 relates to the provision of affordable housing. The applicant submitted a viability report, and this was reviewed independently by consultants that the respondent appointed. It was found that as a build to rent scheme the proposal would not be viable with the provision of affordable housing. It was also recommended by the respondent's consultants that a viability review mechanism be included as well as a clawback mechanism if the development does not remain as build to rent.
7. The applicant did not seek to deliver a build to sell scheme and there is nothing that I have been made aware of in planning policy that would require them to. It would therefore have been an entirely academic process to require them to carry out a viability report for that type of development. In the context of planning policy and the review and clawback mechanisms available as outlined above, the Council's position with respect to reason for refusal 4 is unreasonable and has led to unnecessary and wasted expense on the applicant's part in the appeal process.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of reason for refusal 4 and a partial award of costs is therefore warranted.

Costs Order

9. 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 Brentwood Borough Council shall pay to Bar Stone Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of reason for refusal 4 as stated on the decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Brentwood 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.

Graham Wraight

INSPECTOR