



Costs Decision

Hearing held on 12 August 2025

Site visit made on 12 August 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Costs application in relation to Appeal Ref: APP/U2235/W/25/3365602

40 Sandling Road, Maidstone, Kent ME14 2RF

- 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 James Mills on behalf of CKE Homes Ltd for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for conversion of former public house into 1no 2-bedroom flat and 3no 1-bedroom flats.
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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. Paragraph 049¹ of the PPG indicates 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. Examples of such behaviours include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant asserts that the Council behaved unreasonably as it did not exercise discretion in applying its development plan policies and failed to properly assess its housing land supply.

Application of development plan policies

5. As set out in the Planning Officer's Report, whilst the Council accepts the applicant's Viability Study presents some reasonable arguments, in the absence of audited financial reports and proper marketing evidence the Council considered the proposal failed to adequately demonstrate there is no demand to use the premises as a pub and that the premises is not commercially viable.
6. The Planning Statement which accompanied the planning application acknowledged the Council could demonstrate more than five years' supply of housing land. Therefore, at time of the Council's decision, the development plan

¹ Reference ID: 16-049-20140306

policies of most importance for determining the application were not out-of-date for the purposes of paragraph 11 of the National Planning Policy Framework (the Framework).

7. The applicant considers the Council was unjustified in requiring the proposal include audited financial reports and evidence of proper marketing, since this evidence was not available to the applicant for reasons discussed in the appeal decision. However, the submission of audited financial reports and proper marketing evidence is a requirement of Policy INF2 of the Maidstone Local Plan Review 2024. The policy contains no specific mechanism to permit alternative types of evidence. Since there were no material considerations which indicated a decision should be taken other than in accordance with the development plan, there was little discretion available to the Council in applying its policies.
8. The Council invited the applicant to pay a fee to cover the cost of the independent review of its Viability Study. Whilst the applicant notes the Council may employ in-house staff suitably qualified to carry out a review, they would not be independent of both parties.
9. Independent review would verify that the assumptions within the viability assessment are reasonable and realistic, and it is clear from the Council's correspondence that a third-party assessment would influence the weight afforded to the Viability Study. However, since the study would not satisfy the evidence requirements of Policy INF2, it is unclear how an independent review would enable the proposal to adequately address the Council's concerns.
10. However, the applicant declined to pay the third-party assessment fee and therefore did not incur unnecessary or wasted expense.

Assessment of housing land supply

11. The Council's housing land supply position has materially changed since its determination of the planning application, with the Council currently estimating it has a housing land supply of 4.5 years. At paragraphs 4.3 and 4.4 of its Statement of Case (SoC), the Council considers it cannot demonstrate a five-year supply of specific, deliverable housing sites, as required by paragraph 78 of the Framework, and accepts the provisions of paragraph 11(d) of the Framework are engaged in determining the appeal proposal.
12. Framework paragraph 11(d) requires planning permission be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This requires the decision-maker exercise planning judgement regarding the magnitude of harms and benefits associated with the proposal.
13. The PPG advises that the weight to be given to a viability assessment is a matter for the decision maker². At paragraph 5.3, the SoC addresses the balancing exercise required by Framework paragraph 11(d), concluding the provision of four dwellings "would make a very minor addition to the borough's housing supply" and considers the benefits of the scheme would not outweigh the loss of the pub.
14. The weight to be afforded to adverse impacts and the scheme's benefits for the purposes of the paragraph 11(d) balance are matters of planning judgement. Whilst

² Paragraph: 008 Reference ID: 10-008-20190509

in my decision I have weighted such factors differently resulting in a different overall outcome, I am satisfied the Council did not behave unreasonably in assessing its housing land supply and exercising its duties at paragraph 11(d).

15. For the reasons set out above, the Council did not behave unreasonably in reaching its findings that the proposal did not accord with the development plan and it had due regard to the requirements of national policy and all other material considerations including the assessment of housing land supply, and therefore the appeal could not have been avoided.
16. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Dade

INSPECTOR