
Costs Decision

Site visit made on 15 May 2017

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 June 2017

Costs application in relation to Appeal Ref: APP/Y1945/W/17/3168116 786A St Albans Road, Watford WD25 9FH

- 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 Watford Car Sales for a full award of costs against Watford Borough Council.
 - The appeal was against the refusal of planning permission for retrospective application for the change of use of land and buildings from a limousine hire company to a car sales company (*sui generis*).
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a Council is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by an objective analysis.
 4. The Council refused the application for two reasons. The first reason relates to the impact of the use on the living conditions of residents on Kilby Close. The applicant supplied two surveys regarding the level of car movements associated with the business operating on the site. The Council suggest that the anecdotal evidence provided does not provide robust information on the level of vehicular movements associated with the car sales business. However, the information was supplied by the owner of the company based on actual levels of operation within business operating hours. In contrast the Council relied on anecdotal evidence from local residents and provide no significant challenge to the figures supplied by the applicant.
 5. I have found in my decision that the way the business operates and the consequent level of car movements is not significant in contrast to the existing authorised use of the site and is not at a level to cause material harm to the residents of Kilby Close. I concluded that had the use been otherwise acceptable then details such as the method of operation including hours of
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operation, numbers of cars for sale etc. could be controlled by means of a condition. Therefore, in this instance the Council has not provided substantive evidence to refute that of the appellant's and instead made generalised assertions regarding the impact of the use. In this respect it has acted unreasonably.

6. The Council's second reason for refusal relates to the harm caused to highway safety from cars being parked on the forecourt area of the appeal site. The applicant places great reliance on the appeal decision APP/Y1945/A/10/2124872 which included a condition which restricted the number of cars for sale on the forecourt to five. However, I have already found that the reliance on that appeal decision is flawed due to the difference in the site address between the appeal proposal and that currently before me now. Furthermore, it has not been demonstrated that five cars could be accommodated within the appeal site as demarked by the red line on plan ref 16/01373/COU. Moreover, I have agreed with the Council that the restricted parking area leads to harm to highway safety. I therefore do not consider that the Council has acted unreasonably in this respect.
7. Turning to the matter of unnecessary or wasted expense. The applicant would have needed to submit the appeal in any case due to the harm caused to highway safety. Nevertheless, the applicant has incurred unnecessary expense in the preparation of his appeal submission in respect of the first reason for refusal. Given my findings, a partial award of costs is justified and, to this extent, the application succeeds.

Costs Order

8. 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 Watford Borough Council shall pay to Watford Car Sales, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the Council's first reason for refusal regarding the effect of the proposal on residents living conditions.
9. The applicant is now invited to submit to Watford Borough Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Zoe Raygen

INSPECTOR