



Costs Decision

Site visit made on 10 September 2019

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2019

Costs application in relation to Appeal Ref: APP/C3105/W/19/3228237 Euro Garages, Oxford Road, Bicester OX26 1BT

- 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 Euro Garages Ltd for a full award of costs against Cherwell District Council.
 - The appeal was against the refusal of planning permission for redevelopment of the existing service station including the retention of the existing Petrol Filling Station (PFS) and kiosk; demolition of existing restaurant building and construction of a Drive-Thru coffee-shop; construction of a restaurant building on land currently used for HGV parking; associated parking provision; retention of existing vehicular access from Oxford Road and reconfiguration of internal access routes to serve the development; creation of separate pedestrian/cycle access; all associated engineering and landscape works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority includes lack of co-operation with the other party or parties and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The appellant's case is essentially that in refusing the application on the grounds of inappropriate design, which in part related to the proposed use of materials, the Council behaved unreasonably as the imposition of a planning condition relating to materials, as proposed in the list of suggested conditions, would have addressed this issue and it need not have formed part of the appeal considerations. In addition, the appellant states that correspondence with the Highway Authority following the submission of the appeal has shown that had co-operation taken place between the parties at the application stage

- then agreement could have been reached regarding the matter of connectivity and that this would have reduced the matters for consideration at appeal.
5. As can be seen from my decision, I have allowed the appeal and granted planning permission for the proposal as I do not consider that the Council's reasons for refusal are justified.
 6. However, with regard to the first reason for refusal concerning the effect of the proposal on the character and appearance of the area, this involves matters of judgement and the Council's concerns regarding the proposal went well beyond the issue of materials, also referring to the height, scale and positioning of the buildings. Under these circumstances I do not consider that the imposition of a condition relating to materials to be used in the construction of the buildings would have overcome the Council's concerns. It did not therefore refuse planning permission on a planning ground capable of being dealt with by conditions. Although I take a different view to the Council in respect of the design of the proposal and its effect on the character and appearance of the area, this does not mean that the Council behaved unreasonably.
 7. With regard to the issue of a lack of co-operation, it seems that prior to determining the application, the Council received two formal consultation responses from the Highway Authority, one in November 2018 and one in February 2019, both of which referred to concerns relating to pedestrian and cycle routes and connections to existing routes. It appears that the appellant was made aware of these consultation responses and that some additional information was provided which resulted in the second Highway Authority response in February confirming that although some of the original objections had been overcome, concerns relating to pedestrian and cycle connectivity remained. An email from the Council's planning officer to the appellant the day before the application was refused confirmed that there remained outstanding queries in relation to these matters.
 8. Although I note that a further layout plan was submitted by the appellant prior to the determination of the application and that the determination was made in advance of any additional comments being made by the Highway Authority, the email from the Highway Authority to the Council's planning officer dated 11 March 2019 clearly states that the further layout plan didn't resolve the objections in relation to connectivity. I note that extensions of time were agreed during the application process which allowed further time and opportunity for dialogue between the appellant and the Council in an attempt to address the Highway Authority concerns but that agreement hadn't been reached by the time the application was determined. Whilst this was unfortunate, I do not consider that the evidence demonstrates that there was a lack of co-operation on the part of the Council during the course of the application.
 9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified.

Beverley Wilders

INSPECTOR