



Costs Decision

Site visit made on 18 November 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Costs application in relation to Appeal Ref: APP/W0340/W/19/3235440 60 Grove Road, Newbury, Berkshire RG14 1UL

- 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 A Cornish for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for "Part retrospective application for erection of domestic shed to be used for hair salon (A1 Use) to rear amenity and application for dropped kerb to highway".
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Decision

1. The application for a partial award of costs is allowed.

Reasons

2. The Planning Practice Guidance (the 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. The Guidance is clear that a Council could be vulnerable to an award of costs against it if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, a Council could be vulnerable if it fails to produce evidence to substantiate each reason for refusal.
3. The costs application alleges:
 - that the Council has prevented development that should have been permitted having regard to the development plan and national policy,
 - that the Council has made vague, generalised or inaccurate assertions about the proposal's impact, and
 - the Council has not determined similar cases in a similar manner.

Development plan consistency

4. Whether the proposal is in accordance with the development plan is primarily a matter associated with my main decision. I have found that the proposal would be contrary to the development plan by being harmful to the residential character of the area through the commercialisation of the site. I therefore do not support this part of the applicant's claim for costs. However, in my main decision I have concluded that two policies referred to, and partly relied on, by the Council were incorrectly applied and were not relevant to the case.

Specifically, this is in reference to policy CS9 of the West Berkshire Core Strategy 2012 (CS) and policy P1 of the West Berkshire District Council Housing Site Allocations DPD 2017 (DPD).

5. However, despite the above the proposal was nevertheless found to be contrary to the Development Plan as a whole.

Vague and inaccurate assertions

6. The appellant claims that the Council incorrectly referred to policy CS9 of the CS, and that its use to partly justify refusal, was unreasonable. I have found that this Policy has no bearing on the consideration of the appropriate location of a retail use. Conversely, policy CS11 refers to retail and explains that this should be located in local centres. Although the Council maintains that the proposal would be a business use, paragraph 5.48 clearly explains that the policy relates to uses falling within the B1, B2 and B8 use classes. I therefore concur with the applicant's assertion in this matter.
7. It is also stated by the applicant that policy CS19 of the CS, is irrelevant as it only deals with the historic environment and landscape character. However, I have concluded in my main decision, that this policy is broader than the applicant has suggested and is therefore relevant to the case.
8. In regard to the issues associated with highway safety, the applicant claims that policy P1 of the DPD was incorrectly referenced. The policy relates to parking requirements associated with new residential development. In my main decision, I found that Policy P1 provided an indication of the predicted retained available parking for the proposal, but this was not in itself an applicable policy. Furthermore, appendix 5 of the West Berkshire District Council Local Plan 2007 (LP), requires 1 space per 30m² of retail floorspace which is also satisfied. This means that the parking provision would accord with the adopted policies for residential and retail use, even if both had been applicable in this case.
9. The Council has not referred to a different parking standard in regard to the parking demands of a hairdresser use. Furthermore, the Council has not provided substantive evidence that the proposal would result in significant on-street parking, through surveys or site observations, or shown how it would fail any parking policy. Furthermore, the Highway Engineer stated that the alleged peak parking did not coincide with her site visits¹. Consequently, I concur with the applicant that the Council has relied on a policy that is either not relevant or has been satisfied. I therefore support this part of the claim that the Council has behaved unreasonably in finding conflict with the plan. This is both in regard to the policy required parking provision and in finding a resultant impact on highway safety.
10. I also recognise that the advice of the Council's highway engineer changed during the application process. The engineer was entitled to review and revise their comments, although this appears to have been based on anecdotal rather than direct evidence. Furthermore, representations raised issues in connection to inconsiderate and dangerous on-street parking. Although these are material considerations, they were not substantiated by the Council. Consequently, the Council failed to provide substantive evidence to demonstrate that the proposal

¹ Email from the Council's Highway Engineer 12 June 2019

would have a harmful effect on highway safety. The Council therefore failed to adequately justify the imposition of the second refusal reason.

Inconsistency

11. Although each case must be determined on its own merits an applicant should expect similar cases to be dealt with in a similar manner. The applicant suggests that a recent approved scheme for a similar use in 2018² established a precedent for the proposal. However, I have found material differences between these cases including in terms of the size of the forecourt, the location of the outbuilding and the size of the retained rear garden. These differences indicate that the commercial use occupies a smaller proportion of land from the residential use, having a lesser impact on the residential character of the site and area. I therefore have not found the Council to be inconsistent by refusing the proposal.

Conclusion

12. In conclusion, the proposal had been found to conflict with the development plan. As such, the Council's decision to refuse the proposal was reasonable. Therefore, the decision in its entirety did not cause unnecessary delay to the applicant.
13. However, I have found in my main decision that there would not be an unacceptable impact on highway safety. The second reason for refusal was not substantiated by sufficient evidence from the Council, despite the use being operational. Furthermore, the Council should have provided robust evidence especially as the highway engineer's original comments were in the public realm. Consequently, unreasonable behaviour in regard to the second reason has been found. I have therefore adjusted the application for full costs to a partial award with regard to arguments advanced in connection with highway safety. This part of the applicant's appeal has resulted in unnecessary and wasted expense as described in the Planning Practice Guidance.

Costs Order

14. In the 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 West Berkshire District Council shall pay to Mr A Cornish, the partial cost of the appeal proceedings described in the heading of this decision, relating to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to West Berkshire 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.

Ben Plenty

INSPECTOR

² Planning Application Reference: 18/00671/FUL