



Costs Decision

Site visit made on 13 July 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2020

Costs application in relation to Appeal Ref: APP/B1740/W/20/3251846 Station Garage, 44 Milford Road, Pennington SO41 8DU

- 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 Tim Lincoln, Brightbeech Investments LLP, for a full award of costs against New Forest District Council.
 - The appeal was against the refusal of planning permission for the change of use of a garage and car showroom (Sui Generis) to form 2no. retail units (A1 and A5) of 363 sqm and 123 sqm respectively with associated parking and landscaping.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. The application is for a full award of costs. In essence, the applicant considers that the appeal was unnecessary because the Council has failed to substantiate its reasons for refusal and should have granted planning permission. In particular, that there is no requirement for comprehensive development of the allocation site, that what is a complementary retail use remains unexplained and that the Council did not follow the advice of the Highway Authority. The Council has been provided with an opportunity to comment on the application.
4. LPP2 Saved Policy LYM5 does not require comprehensive development of the allocation site by one proposal, development or developer. The Council's objection is, broadly, that the appeal proposal has been submitted piecemeal in isolation and without any apparent meaningful consideration of the development potential of the remainder of the allocation site, and for a form and type of development on the appeal site that is at odds with the requirements of this Policy, plainly read, given the context of the nature and extent of the allocation site and how it relates to its surroundings. In my appeal decision I have found that the appeal proposal would prejudice a satisfactory resulting comprehensive development of the entire allocation site, including for housing, and the Council's aspirations for the Pennington shopping parade.
5. LPP2 Saved Policy LYM5 does not provide a definition of 'complement'. The Council's objection is, essentially, that the provision of the same A1 retail use, a new convenience store, very near to an existing convenience store would not complement each other or the Pennington shopping parade, including because

the proposed A1 unit would be larger than the existing convenience store and the other retail units. In my appeal decision I have found that there is no evidence that it would deliver extra features, goods, products or services that would improve or broaden existing retail activity within the Pennington shopping parade and by this means (and ordinary meaning of the word) complement that which already exists, as opposed to replicate or replace that which exists.

6. The Highway Authority (HA) did not object to the proposed level of car parking spaces. However, the Council is not obliged to accept the HA advice. I note that LPP1 Policy ENV3(iv) includes that the Council will have regard to the '*character and quality of the street*' and to '*pedestrian convenience and comfort*'. Furthermore, the Council's parking SPD indicates that it will have regard to the '*needs and aspirations*' of its communities, be '*responsive to local circumstances*' and that '*parking should not be considered in isolation*', including '*how it relates to its context*'. In addition, the proposed level of parking provision is in part predicated on an assertion that no staff would park on site and without any survey of current on-street parking patterns, as is otherwise expected by the SPD.
7. The HA did not comment on the proposed level of cycle parking provision or the car or cycle parking layout. I note that LPP1 Policy ENV3(iv) includes that the appeal proposal should integrate car and cycle parking spaces '*so that realistic needs are met in a manner that is not prejudicial to... highway safety... or to pedestrian convenience and comfort*'. Furthermore, the SPD indicates that '*the layout of on-site car parking is important but should not be allowed to dominate the design process*' and that the Council will seek '*convenient, safe and secure cycle parking*' that is '*easy to use*'.
8. I consider that it was not therefore inappropriate for the Council to reach its own conclusions on these highways matters. The Council was entitled to have regard to these other considerations, as also informed by a site visit, the professional judgement of its Planning Officer and a significant level of public concern. In my appeal decision, and notwithstanding my finding on the level of car parking provision, I have found that level of cycle parking provision and the car and cycle parking layout would not be satisfactory.
9. Considering the above, I find that the Council determined the application in a reasonable manner and that it has been able to substantiate its reasons for refusal at appeal.

Conclusion

10. For the reasons given, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs is not justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR