



Costs Decision

Site visit made on 4 August 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2020

Costs application in relation to Appeal Ref: APP/R5510/W/20/3250434 Morrisons, 43-67 High Street, Yiewsley, West Drayton UB7 7QQ

- 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 Habourside Investments Ltd and WM Morrison Supermarkets PLC for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of planning permission for demolition of the existing buildings and the redevelopment of the site to provide a part 4 to part 8 storey building comprising a replacement Class A1 1,643sq.m (GIA) foodstore, 144 residential units, basement car parking and associated works without complying with conditions attached to planning permission Ref 2370/APP/2018/2793, dated 21 August 2019.
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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 where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour 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. The PPG also advises that a local planning authority 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 any objective analysis.
4. The Council's first reason for refusal of the application raised concern that the level of residential car parking would fail to address the needs of future occupiers, resulting in unacceptable impacts to highway and pedestrian safety. The Council has not argued that the proposal would conflict with those policies of the adopted and emerging development plan which deal specifically with the provision of parking. There is also no dispute between the parties that relevant parking standards are expressed as maximum rather than minimum levels, nor that there is general policy support for reducing parking provision, and a need to encourage sustainable modal travel choice and reduce reliance on the private car.

5. However, the development plan and the National Planning Policy Framework (the Framework) also require, amongst other things, that the effects of development on highway safety, the highway network and on living conditions generally are considered. These matters could undoubtedly be affected by parking conditions. While I have come to the conclusion that harm would not be caused in this case, I do not therefore consider that the Council behaved unreasonably in refusing permission simply because there are no minimum parking requirements.
6. The Council's evidence refers to data from the 2011 Census regarding patterns of vehicle ownership and use, as well as the level of parking that has historically been provided on other developments. However, I have not been directed to any relevant policy or guidance which would support the use of past trends as a robust predictor of the travel choices of future occupiers or of the requirement for parking. I also note that the Council has not challenged research cited by the appellant confirming a strong link between provision for parking, vehicle ownership and use. Representations by Transport for London and the Greater London Authority further refer to a need to restrict parking to encourage a modal shift away from private vehicles. I therefore have significant concerns over the emphasis given by the Council to historic vehicle ownership and use in the area as an indicator of future requirements.
7. Be that as it may, I agree with the Council that access to employment, services and facilities is important to ensure a suitable standard of living for occupiers. The ability to access these by means other than private vehicle, as well as the availability of parking, would also influence travel choices by future occupiers of the development, and as a result the potential demand for additional parking to that proposed on the site.
8. The Council's concerns over the accessibility of the site were supported by clear and objective information on the available public transport connections around the development to enable occupiers to reach destinations. I have ultimately reached a different conclusion to the Council. However, the argument that occupiers may seek to use or own private vehicles to meet travel needs, either initially or owing to a future change in circumstances, with consequent unmet demand for parking was not unsound in principle or unsubstantiated.
9. The Council's evidence acknowledges that restrictions on the eligibility of occupiers for residential permits within parking management scheme (PMS) areas would continue to apply to the development, but these controls are not ubiquitous. I have found that the circumstances of potential parking around the site would be a significant disincentive to vehicle ownership, but this is a matter of judgement and I do not consider that it was unreasonable for the Council to reach a different conclusion. Furthermore, while I accept that the submitted parking surveys did not indicate a high level of existing parking stress, the impact of the development would vary according to the scale of any additional parking demand.
10. While I am satisfied that demand would be limited such that undue parking stress would not be caused, for the reasons above it was not unreasonable for the Council to reach a different view. A more substantial number of vehicles seeking to rely on parking would increase the likelihood of future pressure on those spaces which the parking surveys indicate are currently available, with the effect most noticeable on roads outside of the PMS area where the overall

quantum of the surveyed spaces is lower. The resulting competition would lead to extended searches for parking, and additional traffic movements as well as a greater probability of parking taking place in inappropriate locations. I accept that the Council has not described in detail how this would be harmful. However, it seems to me that these outcomes would by their nature be detrimental to the safety and operation of the highway, as well as quality of life for existing and future residents engaging in protracted searches for parking.

11. Notwithstanding my reservations about the apparent weight given to historic vehicle ownership and use in this area, in this context, I do not find that the Council behaved unreasonably in persisting with concerns that the proposal would lead to additional pressure for parking within the surrounding area with consequent harm to the highway network and living conditions for residents.
12. While I have allowed the appeal, this reflects where my conclusions differ from those of the Council, in particular regarding the likely demand for parking by future occupiers of the development and the resulting effect of this demand on the surrounding area. These matters include elements of planning judgement, and I find that the Council's concerns are clearly explained within their evidence with reference to relevant policies of the development plan. Accordingly, I am satisfied that the Council has substantiated the first reason for refusal, and I do not find that it has prevented development which should clearly have been permitted, having regard to its accordance with the development plan and other material considerations.
13. The applicant has drawn my attention to an award of costs associated with an appeal at Stanford House, 9 Nestles Avenue which related to the Council's approach to residential parking. I do not have full details of the circumstances which led to the award being made. Even so, it appears that there are a number of key differences to the appeal before me including the location of the Stanford House site in a different town centre with a higher existing and anticipated future Public Transport Accessibility Level than the appeal site. It is also unclear whether parking controls around that site are comparable in their extent and operation to those around the appeal site, and I further note that the decision refers to the 'buy to rent' nature of the Stanford House development. While I acknowledge the outcome of that decision, I therefore find that the circumstances that applied are not directly comparable to the application before me.
14. The second reason for refusal of the application related to a failure to secure previously agreed planning obligations. However, a completed Deed of Variation (DofV) to the planning obligation which accompanied the original planning permission¹ was submitted during the appeal. Although there has been a delay in completing the DofV, it would have been required had the proposal been approved at application stage. The applicant's evidence in response to this reason for refusal comprises straightforward references to the progression of the DofV. It seems to me that in reality, there has been little extra work in responding to this matter so that it can be regarded as 'de minimis'. Accordingly, I do not find that the second reason for refusal has resulted in unnecessary or wasted expense for the applicant.

¹ Application reference A2370/APP/2018/2793

Conclusion

15. Despite my concerns over the Council's reliance on historic patterns of vehicle ownership, use and parking provision, I do not find that the Council acted unreasonably in coming to the conclusions that it did overall. The appeal could not therefore have been avoided, and so I do not find that the applicant has been put to unnecessary or wasted expense in the appeal process.
16. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR