
Costs Decision

Site visit made on 14 September 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2021

Costs application in relation to Appeal Ref: APP/P1750/W/21/3270310 1 Elms Road, Aldershot GU11 1LH

- 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 Bernie Scully (Aviva Life and Pensions UK Limited) for a full award of costs against Rushmoor Borough Council.
 - The appeal was against the refusal of planning permission for rebuilding of garage workshop (following fire damage) in same footprint, other than previous unauthorised eastern side extension.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a full award of costs on substantive grounds.
4. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations.
5. The application for costs essentially relies on the fact that the Council Officers recommended that planning permission be granted for the proposal, but that the Council Members acted unreasonably by taking a different course of action without adequate reasons to do so, resulting in costs arising from the Council's reason for refusal.

6. The applicant considers that the Council's Planning Committee has gone beyond the remit of proper material consideration and relevant planning policy by concentrating on the commercial use of the site, which is lawful and extant, and only had limited regard to the substance of the appeal scheme which is the proposed replacement commercial building.
7. In this case I have noted the recommendation of the Council's Officers. However, the decision is one which is a matter of judgement. The Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
8. The reason for refusal as set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly sets out the policies of the *Rushmoor Local Plan 2014 – 2032* (2019) (the Local Plan) against which the proposal would be in conflict.
9. I have allowed the appeal for the reasons given in my decision, which accompanies this costs decision and should be read in conjunction with it. Notwithstanding this, having regard to factors including the proximity of the site to surrounding residential properties, the Class B2 industrial use of the site, and the large number of objections to the proposals from local residents who have experience of living close to the site when the former premises were in Class B2 use, I find that the Council did not act unreasonably in refusing the application.
10. The reason for refusal has been adequately substantiated by the Council in its Statement of Case. This explains why the Council considers that the proposal would be contrary to Local Plan Policies DE1 and DE10, having regard to noise, air pollution and light pollution impacts on the living conditions of neighbouring residents. It confirms that the Council considers that the uses of the site, combined with the scale of the proposed garage building, would result in activities taking place on the site which would detrimentally impact on neighbouring living conditions. In this respect, I am satisfied that the Council has taken sufficient account of the nature of the development comprising a replacement building in addition to the continuation of an existing lawful use.
11. Accordingly, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.

Conclusion

12. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR