



Costs Decision

Site visit made on 15 November 2021

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Costs application in relation to Appeal Ref: APP/K0425/W/21/3278381 Car Park, Old Kiln Road, Flackwell Heath HP10 9NR

- 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 Revere Developments (Flackwell Heath) Ltd for a partial award of costs against Buckinghamshire Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for the redevelopment of the existing car park to include the construction of four semi-detached houses and five flats, landscaping and parking.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 or wasted expense in the appeal process. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, which can include making vague or generalised assertions about a proposal's impact, or by failing to provide evidence to substantiate reasons for refusal.
3. In this instance, the Council's proposed second reason for refusal stated as follows:

"In the opinion of the Local Planning Authority, the redevelopment of the car park would result in the loss of an area of land which has the function of providing off-street parking for users of the facilities of Flackwell Heath. The proposed redevelopment would remove the parking use from this land, contrary to condition 7 of planning permission WR/855/71, thereby resulting in displaced parking on the highway in an area that is already subject to intensive on-street parking. As a consequence, the development is likely to lead to the loss of amenity for local residents and danger and inconvenience to users of the highway [...]"
4. This reason for refusal was directly tied to condition 7 of planning permission WR/855/71 (the Aries House Permission), which originally secured the car park use in connection with Aries House.

5. However, in 2019, the Council's enforcement team investigated the ongoing enforceability of condition 7 of the Aries House Permission, and concluded:
"taking enforcement action against this breach would not be proportionate or expedient, given the material change in circumstances on the land. The condition no longer meets the requirements the six tests and as such is ultra vires, and any challenge, or appeal against any enforcement action taken is likely to succeed. As such the recommendation is to take no further enforcement action under section 172 of the Town and Country Planning Act 1990 (as amended)".
6. Given this clear and unambiguous advice from the Council's own enforcement team which had explicitly advised that condition 7 of the Aries House Permission was no longer enforceable, I consider it unreasonable for the Council to have then proceeded to include a proposed reason for refusal directly tied to the existence of the condition. As a consequence, the applicant has incurred wasted expense in comprehensively defending a second reason for refusal that should not have reasonably been introduced.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. In 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 that Buckinghamshire Council shall pay to Revere Developments (Flackwell Heath) Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs specifically relating to the proposed second reason for refusal concerning the impact of the development on parking provision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Buckinghamshire 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.

James Blackwell

INSPECTOR