



Costs Decision

Site visit made on 11 February 2022

by R Walmsley BSc, MSc, MA, MRTPI

Decision date: 25 April 2022

Costs application in relation to Appeal Ref: APP/J3720/W/21/3281889 Lock-up garage site on land rear of Hodgson Road, Stratford upon Avon CV37 0DD

- 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 for costs is made by Mr Clive Stanton for an award of costs against Stratford-on-Avon District Council.
 - The appeal was against the redevelopment of vacant lock-up garages and hardstanding to form 5 dwellings & associated access.
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Decision

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

Procedural matter

2. The applicant has submitted an application "for award of appeal costs". I understand this to mean that he is applying for a full award of costs given the reference to substantive and procedural matters.

Reasons

3. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
4. In February 2021 the Local Highway Authority (LHA) raised an objection to the planning application. Concerns were also expressed by a Member of the Council. This translated into an objection by the Local Planning Authority (LPA) on highway grounds. The LPA clearly communicated the concerns to the appellant at each stage of the application process. As such the LPA co-operated with the appellant and refused the application according to procedural requirements. Furthermore, notwithstanding the content of the LHA's objection, the LHA responded to the LPA's consultation in a timely manner and in line with the planning application process.
5. It seems that the Planning Officer may have been considering a recommendation of approval to the planning committee, based on discussions pertaining to conditions. However, following ongoing discussions with the LHA,

a more definitive position on highway grounds was reported to committee and the planning application was refused accordingly. The reason for refusal is clear in its wording and relates to the concerns reported to committee. Although this will have been disappointing for the appellant, this was not contrary to procedural requirements.

6. The more definitive position was, in part, because the LHA changed its position on the intensification of use at the site. This change of view was made late in the planning application process and led to new concerns for the development proposed. The change of view meant that the width of the access was considered acceptable early on in the planning process but became a deciding factor by the time the application went to committee. This was unhelpful to the appellant and gave a false sense of reassurance. However, whilst the LHA changed the content of its objection, it was consistent in its objection to the development proposed and so the LPA had legitimate concerns which did not lead to the necessity of going to appeal.
7. Despite the assurance that comments on the exception report would be reported to committee, the application was decided without this information. This led to the application being refused, in part, on insufficient information. This was unreasonable given that the information was before the LHA and the LPA.
8. The matter of the publicly maintained footpath (HMPE) and the implications of this for the development proposed was also a point raised late in the decision-making process. This could have been avoided had the LHA made a more rigorous assessment of the proposal early on. Nonetheless, the onus is largely on the appellant to investigate the site in detail and had this been the case, the HMPE would have come to light. Furthermore, the appellant was aware of the need to accommodate a through-route that was safe for pedestrians. At the time the planning application was recommended to committee, pedestrian access remained unresolved. And so, whether the route was publicly maintained or not, pedestrian access remained a concern.
9. The LPA requested a Road Safety Assessment on the basis of the change of use from garages to residential. This was a reasonable request, albeit it could have been made earlier which, in turn, would have helped shorten the time it took for the Council to decide the planning application and, in turn, reduce the unsatisfactoriness experienced by the appellant.
10. The appellant questions the quality of the LHA's assessment of the Road Safety Audit (RSA) with reference to the HMPE. The Council were right to question the appellant's awareness of this given that the RSA references a footpath and not a HMPE.
11. The Fire and Rescue Services raised no concern for the development proposed. The LHA commented separately, explaining in their comments of July 2021 that the swept path analysis may not be acceptable to the Fire and Rescue Services. It is not unreasonable for both consultees to have commented independently of each other. It is the LPA who ultimately comes to a view, taking into account all comments received. Notwithstanding this, the concern about turning and collisions was not material to the LPA refusing the planning application.
12. The comments from the Fire and Rescue Services were not reported to committee. However, the comments were publicly available on the Council's

website and therefore failure to report it to committee did not prejudice the determination of the application, particularly as no objections in this regard were received.

Conclusion

13. I have found a degree of unreasonableness relating to insufficient information which is a substantive matter. However, as this was not the sole reason for the planning application being refused, this did not lead to the necessity of going to appeal. On balance, therefore, it has not been demonstrated that the Council behaved unreasonably in respect of procedural or substantive matters associated with the determination of application 20//03585/OUT. Consequently, there has not been any unreasonable behaviour which caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

R Walmsley

Inspector