



---

## Costs Decision

Site visit made on 12 July 2022

**by Alexander O'Doherty LLB (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 October 2022**

---

### **Costs application in relation to Appeal Ref: APP/Y3940/W/21/3287001 Units 10, 11 & 12 Callow Park, Callow Hill, Brinkworth, Wiltshire SN15 5FD**

- 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 Joe Friday for a full award of costs against Wiltshire Council.
  - The application Ref PL/2021/03412, dated 19 March 2021, was approved on 15 September 2021 and planning permission was granted subject to conditions.
  - The appeal was against a grant of planning permission subject to conditions for a change of use of B1(a), B1(b) areas to sui generis use of, online car auction storage facility with guest area and reception. (B8 use class to remain) Including extensions and alterations to the units.
- 

### **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<sup>1</sup>.
3. The applicant lodged an appeal against the conditions imposed on planning permission Ref PL/2021/03412, alleging that several of the conditions did not comply with the 6 tests found in the National Planning Policy Framework (the Framework). In this costs application, the applicant argues that the Council acted unreasonably in imposing the disputed conditions, resulting in unnecessary expense for the applicant in instructing a professional planning consultancy to compile the appeal.
4. I appreciate the difficulties encountered by the Council in assessing the proposal before them at application stage, as the copies of correspondence supplied indicates that the Council had to undertake a significant amount of probing to ascertain what the proposal specifically related to.
5. I also recognise that the planning conditions imposed on the grant of planning permission by the planning committee were to a large extent drawn up to closely reflect the details found in the documents provided by the applicant's own professional advisors. I note that the applicant did not voice any concerns in relation to the proposed conditions in the planning committee meeting or via e-mail. All of this is in the context of a proposal that was the subject of local interest.

---

<sup>1</sup> Paragraph 16-028-20140306

6. I recognise that members have the authority to impose or alter conditions recommended by their officers taking account of local circumstances. Nevertheless, decision-making authorities have a responsibility to independently and objectively scrutinise proposed conditions against the 6 tests found in the Framework and the relevant legal duties, and to either amend or reject any proposed conditions which do not meet those tests and duties. Paragraph 56 of the Framework requires that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning, and to the development to be permitted, enforceable, precise and reasonable in all other respects.
7. In this regard, as explained in detail in my appeal decision, conditions Nos 3, 4, 5, and 7 were not reasonable in all respects, condition No 3 was not enforceable and not precise in part, and that, as accepted by the Council, condition No 9 was unnecessary.
8. Specifically, condition No 3 as drafted is unreasonable as it curtails the running of online auctions at the times required as per the applicant's business model and has the effect that office-based staff are not able to undertake any kind of work before 08:00 or after 18:00 on weekdays, even though these activities are contained within Units 11 & 12 and consequently would have a limited impact on the living conditions of nearby occupiers, especially considering that condition No 6 acts to limit noise from the site.
9. Additionally, the second part of condition No 3 as drafted is unreasonable as the condition has the effect of forbidding the use of Unit 10 for storage outside of certain hours, when in reality the use of Unit 10 for storage is required at all times. It is not precise as it is not clear if the condition prevents staff from entering Unit 10 to check on the stored cars outside of the stated hours, and is not enforceable because it would be practically impossible to readily detect if staff were visiting Unit 10 outside of the hours stated in the condition.
10. Conditions Nos 4, 5, and 7 as drafted are not reasonable in all respects as the evidence indicates that it would not be necessary or reasonable to restrict the numbers of non-employees / staff who can visit the site, including visiting members of the car auctions use, in terms of highway safety and the living conditions of neighbouring residents.
11. Condition No 9 is not necessary as drafted as the rights otherwise granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) do not apply to the site.
12. All these conditions were therefore found to be in conflict with paragraph 56 of the Framework, which the PPG identifies as an example of unreasonable behaviour with respect to the substance of the matter under appeal<sup>2</sup>. As such, I consider that the Council's behaviour was unreasonable in imposing these conditions, which contained significant defects, on the grant of planning permission.
13. This unreasonable behaviour resulted in unnecessary and wasted expense in relation to the applicant instructing a professional planning consultancy to compile an appeal against conditions Nos 3, 4, 5, 7, and 9 imposed on the planning permission.

---

<sup>2</sup> Paragraph 16-049-20140306

## **Conclusion**

14. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense in the appeal process, as described in the PPG, has been demonstrated and that a full award of costs is justified.

## **Costs Order**

15. 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 Wiltshire Council shall pay to Mr Joe Priday, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Wiltshire 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.

*Alexander O'Doherty*

INSPECTOR