
Costs Decision

Site visit made on 17 August 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

**Costs application in relation to Appeal Ref: APP/W0340/W/22/3292438
Land adjoining No. 11 Pond Close, Newbury, Berkshire RG14 6HJ**

- 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 A, D & E Property Limited for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for removal of derelict garages and erection of 2 no. houses and 2 no. flats, together with associated landscaping and parking.
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Decision

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

Reasons

2. Planning Practice Guidance 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. Planning Practice Guidance provides a number of potential examples of unreasonable behaviour by Councils, both substantive and procedural.
3. Some examples 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, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, and not determining similar cases in a consistent manner.
4. Fundamental in the Council's decision to refuse the original application was the concern that the proposal would give rise to houses in multiple occupation in the future, and that the subsequent demand for parking would outstrip the number of spaces provided, harming highway safety.
5. This concern has not been substantiated because the proposal before them was for Class C3 houses and flats, and there is no evidence that a change of use away from what is proposed could happen without further planning or regulatory control or that if it could happen that the implications would be such that parking and highway safety would be materially harmed.

6. It was therefore an inaccurate assertion about the proposal's impact and not supported by any objective analysis. Consequently, the exceptional circumstances required by policy have not been met, and it follows that all of the contentions that flow from this concern are also not substantiated.
7. There was also a concern that the proposal would result in the loss of valued facilities and general amenity in relation to parking provision. However, it is clear that the site is in private ownership and has not been used in a capacity that is beneficial to the community for a number of years.
8. Any transient usage of the limited hardstanding in more recent years has ceased and is unlikely to reoccur due to the land owner's prerogative. Again, it was therefore an inaccurate assertion about the proposal's impact and not supported by any objective analysis. Consequently, the concern around local circumstances in this regard is also unsubstantiated.
9. Ultimately, for the reasons given in my appeal decision, removing the garages would have no bearing on existing parking demands or highway safety and the proposal in and of itself provides sufficient off street parking to avoid exacerbating on street parking demands.
10. Whilst widening and other improvements to the highway would secure the safe passage of pedestrians and vehicles and provision of cycle storage would enhance modal choice and quality of life. Objectively, and based on the substance of the evidence, the proposal is acceptable.
11. Given my findings in relation to the acceptability of parking and highway safety, it has not been necessary to engage with Paragraph 111 of the National Planning Policy Framework.
12. Whilst I note the applicant's contention that there has been inconsistency in decision making, I do not have the full details¹ of the previous applications and appeals in front of me and the matter, along with any contended delays in the original application, has not been determinative in this decision.
13. Altogether, I am satisfied that the Council made inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. As such, the Council refused the application on unsubstantiated grounds and acted unreasonably in doing so.
14. They prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations. Consequently, in accordance with Planning Practice Guidance, I find that unreasonable behaviour has resulted in the applicant incurring unnecessary or wasted expense in pursuing the appeal, and a full award of costs is justified.

¹ Including all plans, drawings and arguments put to the decision maker in each case

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 West Berkshire Council shall pay to A, D & E Property Limited the costs of the appeal proceedings described in the heading of this decision.
16. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, such costs are to be assessed in the Senior Courts Costs Office.

Conclusion

17. For the reasons given, the application for a full award of costs is allowed.

Liam Page

INSPECTOR