



Costs Decision

Site visit made on 9 August 2022

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2022

Costs application in relation to Appeal Ref: APP/J1535/W/21/3279772 Garages to the rear of Nos 13-43 Charles Street, Epping CM16 7AU

- 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 Russell Tomkins (RCT Construction) for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing garage buildings and the erection of 9 x 2 bedroom mews houses, with associated landscaping, parking, bike and refuse stores without complying with conditions attached to planning permission Ref EPF/3426/18, dated 15 December 2020.
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Decision

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

Reasons for the Recommendation

2. The 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.
3. On substantive grounds, the applicant suggests that the Council have prevented development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material consideration. Whilst I appreciate that I have found the proposal acceptable and the appeal has been allowed, the Council were not unreasonable in coming to their decision and sound planning reasons were given for the refusal of the planning application against the relevant policies within the development plan. It is not unreasonable for the members of the planning committee to make a decision which is against the advice of the Council's Planning Officer, as this is a recommendation only, and they are entitled to reach a different conclusion. Consequently, I am not persuaded that the Council has acted unreasonably by preventing development that should have been permitted.
4. The applicant also states that the Council made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. It is noted that the Council's report recommended that the application was approved and therefore did not contain any objective analysis in relation to the refusal of the application. However, although concise, the reason for refusal provided within the decision notice provides sufficient analysis of the proposal and the Council's decision. Again, whilst I have come to a different conclusion to the Council in relation to the appeal, I have found

no evidence to suggest that the Council's comments were vague, generalised or that they made inaccurate assertions about the proposal.

5. It is also contended that the Council have not determined similar cases in a consistent manner, highlighting that there were very close similarities with the original permission. However, due to the nature of the application to vary conditions under section 73 of the Town and Country Planning Act 1990, the development would be similar. However, this would not automatically submit that the proposed variations to the conditions were acceptable and it is not unreasonable for the Council to refuse the application even though the original permission was approved. Therefore, it has not been sufficiently demonstrated that the Council have not determined similar cases in a consistent manner.
6. On procedural grounds, the applicant has highlighted that the Council have failed to adhere to deadlines by not determining the application within the statutory time period, with a delay of 12 weeks. The Council state that this delay was due to an attempt to get improvements to the scheme, a backlog of cases on the planning committee agenda and issues pertinent to the COVID pandemic and virtual events. Ultimately a decision was issued and whilst this did not meet the statutory deadline, which could be considered unreasonable behaviour, this delay did not alter the overall outcome of the application. Therefore, an appeal would have still been necessary regardless of the delay and I am not convinced that this has resulted in any unnecessary or wasted expense.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practise Guidance has not been demonstrated and an award for costs is not justified.

Conclusion

8. For the reasons given above and having had regard to all other matters raised, the award of costs is refused.

E Grierson

INSPECTOR