

Costs Decision

Hearing Held on 19 and 20 October 2022

Site visit made on 19 October 2022

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

**Costs application in relation to Appeal Ref: APP/J0405/W/22/3303919
Land at Fimere Aerodrome, A421/A4421, Fimere, MK18 4AR, 464002,
232391**

- 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 Euro Garages for a partial award of costs against Buckinghamshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of roadside service facility, including a petrol filling station (*Sui Generis*) and drive-through coffee shop (Class E(b) / *Sui Generis*), with associated infrastructure.
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Decision

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

The submissions for Euro Garages

2. The applicants contend that the Council's behaviour was substantively unreasonable in relation to 3 of its reasons for refusal relating to the absence of a retail impact assessment, the impact on a nearby watercourse, and conflict with Policy T1 of the Vale of Aylesbury Local Plan (the LP).
3. Taking each point in turn, the applicant contends that the appeal proposal did not constitute a town centre use, rather being a *sui generis* roadside service facility. This was supported by the approach taken in other appeals, where the presence of a retail or leisure element as part of the whole was not considered to result in the use becoming a town centre use. Even if it were to be considered a town centre use, the appeal proposal is specifically targeted at road users by its location, and National Planning Practice Guidance (the NPPG) is clear that the sequential approach is not relevant in such instances. This was supported in other appeals even where the Inspector found that a roadside service facility included a town centre use.
4. Regarding the watercourse, the applicant argues that this reason for refusal was based on an objection by the Environment Agency to a different application, that was misinterpreted as relating to the appeal proposal. The applicant notes that the Council's ecologist did not object to the appeal proposal, and that a Watercourse Advice Note (the Note) referred to by the Council did not exist at the time of the decision. The applicant invited the Council to withdraw this reason for refusal, but the Council did not and this was further unreasonable behaviour.

5. On the matter of Policy T1, the applicant disputes that the development is unsustainable as the National Planning Policy Framework (the Framework) supports the provision of roadside service facilities. They further claim that the site is not intended to be a destination, rather that it is intended to serve the safety and welfare needs of motorists. That the site is not easily accessible to pedestrians and cyclists shows that it will meet the needs of those who it is designed to serve. The applicant suggests that there is inconsistency in the Council's efforts to prevent competition for town centre uses while seeking for a roadside service facility to be in a location accessible to pedestrians and cyclists. Further, as Policy T1 includes an aim of improving the safety of all road users it does not oppose the provision of roadside service facilities. The appeal proposal would not prevent other development from supporting the modal shift to more sustainable transport measures and would cater to existing road users rather than being the cause of an increase in car usage. The Council compounded its unreasonableness in pursuing this reason for refusal by raising wholly new arguments relating to access to the nearby public right of way, and access to the site by staff.

The response by Buckinghamshire Council

6. In relation to the retail issue, the Council argues that the presence of town centre uses as part of the development justified the need for a Retail Impact Assessment (RIA). Whether the appeal proposal should be viewed as *sui generis* or a collection of individual uses was a matter of planning judgment. The RIA was only submitted with the appeal, and the Council withdrew its objection on this point once it was received. The provision of services at a roadside services facility can vary, and there is no requirement to provide food or retail at such sites. The Council notes the appeals cited by the applicant but finds that each proposal differs from the appeal proposal in terms of the uses, scale, or the nature of conflict at issue.
7. The Council argues that the Note was published in draft at the time the applicant contacted the Council regarding this reason for refusal and was likely to be adopted before any Hearing on the appeal. While there was an initial error in including the reason for refusal, the Council did not therefore act unreasonably in maintaining its objection in relation to the watercourse until an ecologist's report was submitted. The matter would otherwise have needed to be addressed at the Hearing because the Note was a new material consideration.
8. Regarding Policy T1, the Council maintains its position that there is no need for the appeal proposal, including in relation to highway safety. The reference to the public right of way is out of date following further discussions between the Council and applicant to secure access to it. Access to the site by staff fell within the terms of the reasons for refusal, and the Council has not introduced this belatedly as there was previous correspondence with the applicant on this point. The matter is one of broad sustainable transport policies arising directly from the Framework and the LP and fell within the overlap between highways and planning in the Council's structure and professional specialisms.

Reasons

9. The NPPG on planning appeals and the award of costs advises that costs may be awarded where a party has behaved unreasonably, and that behaviour has

caused another party to incur unnecessary or wasted expense in the appeal process.

10. Whether the roadside service facility included a distinct town centre use was one of planning judgment. The appeals provided by the applicant show that this has been a matter of dispute in other instances. I consider that the Council did not act unreasonably in seeking a sequential assessment and RIA to assist them in assessing this matter. As the Council withdrew their reason for refusal on this point following receipt of the RIA, I am satisfied that there was no unreasonable behaviour on this point.
11. The Council clearly acted unreasonably in refusing permission in part on an objection to a separate planning application. However, the subsequent publishing of the Note meant that this point did in fact need to be addressed. The Council withdrew its objection before the Hearing upon receipt of submissions addressing the site's relationship to the watercourse. While unreasonable behaviour occurred, it did not ultimately result in unnecessary or wasted expense to the applicant in the appeal process.
12. While I found in my decision that the proposed development would improve highway safety and would not cause a significant increase in traffic, it would not encourage a modal shift towards more sustainable forms of transport. I found no conflict with Policy T1, but this was a matter of judgment. I do not consider that the Council acted unreasonably in reaching a different conclusion.

Conclusion

13. It has not been demonstrated that unreasonable behaviour has occurred on the part of the Council that resulted in unnecessary or wasted expense on the applicant's part in the appeal process. Accordingly, the application for costs is refused.

M Chalk

INSPECTOR