



Costs Decision

Site visit made on 22 November 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Costs application in relation to Appeal Ref: APP/W3520/W/22/3312743 Land off A14, adjacent to Kiln Lane, Elmswell IP30 9RU

- 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 EG Group (formerly Euro Garages Ltd) for a partial award of costs against Mid Suffolk District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for petrol filling station, a drive-thru restaurant and coffee shop, together with various infrastructure and landscaping works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as lack of co-operation, delay in providing information or other failure to adhere to deadlines, only supplying relevant information at appeal when it was previously requested, but not provided, at application stage. Unreasonable behaviour can also include substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations; vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and not reviewing the case promptly following the lodging of an appeal as part of sensible on-going case management. The application for costs relates to each of these examples.
4. The PPG also indicates that in an appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.

Procedural Grounds

5. The planning application is dated 15 November 2021 and based on the evidence before me, was submitted to the Council and made valid on

23 November 2021 with a 13 week determination date for the application of 22 February 2022. In terms of the circumstances which led to the appeal against non-determination of the application, the evidence indicates that the applicant liaised with Council officers in seeking to address issues as they arose, in particular, those issues relating to highway and flooding matters. It is notable that several extensions of time for determining the application were agreed between the Council and the applicant, the final agreed extension of time was until 30 September 2022. This was seemingly to enable the application to be reported to the Council planning committee on 28 September 2022.

6. In the context of the above, it is apparent that there were delays in determination of the application which were reasonable to address issues raised in consultee responses. Furthermore, during this period, it is evident that there were also ongoing discussions in relation to conditions and planning obligations. It is noted that the Council case officer on 22 August 2022 had requested details of the applicant's solicitor with agreement reached on draft heads of terms of the planning obligation and planning conditions.
7. Although the recommendation of the Officers report (OR) to the 28 September 2022 planning committee was to approve the planning application, the Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The minutes of that meeting indicate that the Council were minded to refuse the planning application for highway and heritage reasons, subject to obtaining further highways and heritage advice and a risk assessment on the reasons for refusal. In addition, Officers were requested to review whether the proposed development would safeguard against crime and disorder.
8. Following the committee resolution, the applicant contacted the Council to request the formal decision notice. No evidence has been presented to me to indicate that any further information was forthcoming from the Council from the date of the planning committee until after the appeal against non-determination was made on 8 December 2022, 10 weeks after the resolution to defer the planning application for Officers to obtain further advice. That is clearly unreasonable behaviour on the part of the Council who, at the very least, could have informed the applicant whether independent advice was being sought and the expected timescales for obtaining such advice.
9. In the absence of an ensuing timely decision notice or any further information from the Council, and in considering whether to lodge the appeal, the applicant was entitled to review the potential reasons for refusal set out in the committee minutes and prepare submissions on that basis.
10. Following the appeal submission, a further OR was presented to 1 February 2023 planning committee entitled 'For consideration to agree the Council's position in relation to the non-determined appeal currently being considered by the Planning Inspectorate'. Officers recommended that the planning application be refused for one reason relating to highway safety, which, as evidenced in the minutes of that meeting, was accepted. The decision was made on the basis of professional advice received by the Council which was summarised in the OR but, on the basis of the evidence before me, was not shared in full with

the Applicant. A decision notice was subsequently issued on 7 March 2023. However, jurisdiction over determining the application was taken away from the Council at the date the initial appeal against non-determination was made in December 2022.

11. The Council's costs rebuttal refers to there being only one reason for refusal and that it was the appellant's choice to provide evidence on other matters that were not included as putative reasons for refusal in the decision notice. It was not until the 1 February 2023, after the appeal had been made, that the detailed concerns of the Council were apparent and a decision notice was issued, some 6 months after the initial decision to defer the planning application. However, at the time the appeal against non-determination was made, as far as the applicant was concerned, there were two, potentially three reasons for refusal set out in the minutes of the September 2022 planning meeting.
12. The conduct of the Council leading up to the September 2022 planning committee was positive and proactive. However, while it was prudent for the Council to seek independent advice following the resolution of the September 2022 planning committee, I find that the Council behaved unreasonably in procedural terms due to a lack of co-operation and delay in providing information to the applicant following the resolution to defer the application in the weeks until the appeal was made.
13. It is not unusual, in cases where the Council has not made a decision on a planning application within the statutory timescale, for the applicant to progress an appeal without full details of the Council's case at the point the appeal is made. Nevertheless, given the 'minded to refuse' resolution of the September planning committee, it was not unreasonable of the applicant to address all those matters in the appeal submission. The subsequent focus of the putative reason for refusal on solely highway grounds, a considerable period of time following the September 2022 meeting, has led to the applicant undertaking abortive work on heritage matters and effects of the proposal on crime and disorder.

Substantive Matters

14. In terms of the putative reason for refusal, I note that the applicant had submitted a Transport Statement with the planning application which also included a speed survey and Stage 1 Road Safety Audit. The highway authority did not object to the development, nor did Highways England. Nevertheless, Council Members are entitled to go against the professional advice of Officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning.
15. Whilst not the evidence of an expert in the field, matters relating to highways were local concerns supported by a significant number of representations from local residents. My experience is that local knowledge can often provide an important insight into the realities of a situation which must then be considered alongside the plethora of objective data and statistics that are often involved in such assessments, which are also based on a snapshot in time.
16. In this regard, the Council were justified in seeking additional independent highway advice and the reasons the Council were minded to refuse the planning application at the first committee meeting in September 2022 were

precise, specific and relevant to the application. They also clearly stated the policies of the development plan which it would be in conflict with along with relevant paragraphs of the National Planning Policy Framework.

17. While I have come to a different conclusion to the Council in respect of highway matters in my appeal decision, the Council did not act unreasonably in providing a robust justification for their highway concerns which was supported by objective analysis. In this case the appeal would still have been necessary because of the Council's view of the scheme's highway effects. Furthermore, a rebuttal of the Council's statement, including the highway evidence would still have been necessary and would not have delayed the development or caused wasted expense.
18. However, the applicant was put to unnecessary time and expense in defending their position in relation to heritage matters and issues relating to crime and disorder when these aspects did not ultimately form part of the Council's putative reason for refusal.
19. The avoidance of an appeal by narrowing areas of dispute are recognised. Nonetheless, overall, for the reasons given above, I find that the Council behaved unreasonably due to a lack of co-operation and delay in providing information to the applicant following the resolution of the September 2022 planning committee to defer the application in the weeks until the appeal was made and then subsequently removing the 'minded to refuse' matter relating to heritage and concern regarding the potential effects on crime and disorder.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified.

Costs Order

21. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mid Suffolk District Council shall pay to EG Group, the costs of the appeal proceedings described in the heading of this decision, limited to those costs of the appeal incurred in relation to the heritage and crime evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mid Suffolk District 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.

A Veevers

INSPECTOR