
Costs Decision

Hearing held and site visit made on 21 February 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 20th March 2024

Costs application in relation to Appeal Ref: APP/U1105/W/23/3330735 Land adjacent to Tithebarn Way

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5) as amended.
 - The application is made by Eagle One MMIII Ltd. for a full award of costs against East Devon District Council ('EDDC').
 - The appeal was against EDDC's refusal of planning permission in respect of application ref. 22/0975/MFUL for the construction of four commercial, business and service units (Class E) and nine detached dwellings with associated access, parking and infrastructure.
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Decision

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

Reasons

2. Parties to planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Although costs applications may relate to events before an appeal is made, an award cannot extend to costs incurred beforehand.²
3. The appellant's application for a full award of costs relates to various interlinked procedural and substantive concerns regarding how EDDC dealt with the development proposed via application ref. 22/0975/MFUL. Despite EDDC having refused permission via decision notice dated 13 September 2023, the Council raised no in-principle objection to the scheme as far back as pre-application discussions in October 2021.
4. The case officer at EDDC responsible for assessing the proposal changed on several occasions, resulting in what the appellant describes as 'persistently changing' expectations. The appellant is of the view that those expectations were often without clear justification, noting that the scheme was not objected to by statutory consultees or third parties and that there was limited engagement from EDDC in terms of achieving a mutually-agreeable scheme.

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

5. The appellant also contends that there was a lack of justification for EDDC's position in respect of the proposal as regards the extent of parking provision or space standards. Furthermore the appellant is of the view that various concerns raised by EDDC were capable of resolution via conditions or obligations, to which the appellant had no intrinsic objection. Moreover the appellant states that EDDC failed to adequately address the positive implications of the proposal in arriving at a balanced view on its merits, in summary opposing development that should 'clearly have been permitted'.³
6. Undoubtedly EDDC could have dealt with the proposal more efficiently and collaboratively. From the evidence before me, more could also have been done to clearly communicate the rationale for certain amendments advanced by EDDC, for example with reference to specific elements of the development plan, surrounding context, or design objectives. Theoretically at least some of EDDC's objections to the scheme could have been overcome by way of conditions or obligations.
7. Whilst the appellant's motivation for an award of costs is therefore understandable, the foregoing needs to be contextualised. Context, in this instance, is intricate. Taking the points in paragraphs 3 to 5 of this decision in order, that pre-application advice indicated that a mixed-use scheme at the appeal site would be acceptable in-principle is incidental.
8. As set out in the associated appeal decision, the site is part of a broad swathe of growth eastwards of Exeter, 'phase 10' of planning permission ref. 12/1291/MOUT. The acceptability of any given scheme in that context would turn on matters of detail,⁴ and the absence of objection from statutory consultees or third parties to a proposal does not inherently indicate that it would be acceptable.
9. The appellant has undoubtedly dealt with uncertainty and delay by consequence of case officers changing. It is, however, far from uncommon for case officers to change during the course of the determination of an application, and for delays to occur (particularly given current systemic resource constraints). Whilst acknowledging that the appellant responded to changing suggestions regarding the proposal over time, in part those changes contributed towards a lengthy determination period. Moreover, the evolving context to the site, very much a work in progress, inherently makes certain planning judgements challenging.⁵
10. Notwithstanding my reasoning in paragraph 6 of this decision, there is nonetheless evidence of engagement and discussion between EDDC and the appellant over time.⁶ Whilst that did not result in a mutually-agreeable scheme, that cannot be achieved in every instance. Moreover awarding costs on the basis of changing officers, each exercising their individual professional judgements, and a lengthy determination time alone would not align with the

³ With reference to PPG ID: 16-049-20140306, being an example of unreasonable behaviour that might give rise to a substantive award of costs against a local planning authority.

⁴ PPG Reference ID: 20-011-20140306 also setting out how pre-application advice 'cannot pre-empt the democratic decision making process of a particular outcome, in the event that a formal planning application is made'.

⁵ Associated appeal decision, paragraph 6.

⁶ EDDC's response on costs, paragraphs 6-8, appellant's statement of case, appendix 6.

purpose for which the costs regime exists,⁷ given the presence of systemic resource constraints and locationally specific complexity here.

11. Turning to the points at paragraph 5 above, I acknowledge that there is no direct provision in the development plan in respect of commercial parking provision.⁸ Nonetheless in that regard EDDC's case was informed both by a previous appeal decision nearby which addressed planning objectives in that regard,⁹ and the overarching aims of strategies 5B and 11 of the East Devon Local Plan 2013-2031 (adopted 28 January 2016). Whilst I have reached a different view to EDDC in respect of parking provision, that is not to say that there was not at least an arguable point in that respect (and also in respect of space standards).¹⁰
12. I accept that, in principle, the appellant had no objection to addressing certain matters via planning conditions or obligations (space standards, landscaping, affordable housing provision and environmental mitigation). However what is clear from the evidence before me is that the history that application ref. 22/0975/MFUL has taken led to what might be termed a hardening of the main parties' positions over time.
13. At the time of the hearing, for example, certain conditions relating to both the appeal proposal and the subsequent scheme remained in dispute.¹¹ Given that context, arguably, deferring certain matters to be addressed via conditions would merely have moved the dispute to a latter juncture rather than resolved them.
14. That logic holds for obligations. At the time of the hearing there remained extensive disputes.¹² Whilst some related to drafting preferences, several related, from in EDDC's rational perspective, to fundamental issues as to applicability (and thereby to effectively securing an appropriate scheme).¹³ In that context agreeing conditions and obligations represented an impasse.
15. That EDDC considered the benefits of application ref. 22/0975/MFUL is unarguable. Whilst understandably the appellant does not agree with the overall recommendation in respect of the former as set out in the associated officer report, that report nonetheless expressly accords weight to certain benefits of the scheme.¹⁴ That is similarly the case of the officer report in respect of application ref. 23/2214/MFUL, where, on balance, the subsequent scheme was recommended for approval.
16. Moreover I reached the view that certain revised plans were necessary to secure via condition in order to make the proposal acceptable.¹⁵ I also reached the view that the obligations in the Unilateral Undertaking dated 29 February 2024 pursuant to section 106 of the 1990 Act were necessary with reference to paragraph 57 of the National Planning Policy Framework (published 20

⁷ PPG Reference ID: 16-028-20140306.

⁸ Associated appeal decision, paragraph 24.

⁹ Ref. APP/U1105/W/20/3246215.

¹⁰ Paragraphs 34 to 38 of the associated appeal decision.

¹¹ Application ref. 23/2214/MFUL.

¹² Associated appeal decision, paragraph 10 and hearing document 2.

¹³ Notably clause 2.3 regarding conditionality and clause 6 regarding individual liability.

¹⁴ Notably, but not only, in the section of the report entitled 'planning balance and conclusion'.

¹⁵ Associated appeal decision, paragraph 49.

December 2023) as opposed to those in the earlier iteration dated 5 February 2024. I cannot therefore rationally support the appellant's position that the version of the proposal before EDDC at the time of their decision notice of 13 September 2023 should clearly have been permitted.

Conclusion

17. Drawing my reasoning together, there was undoubtedly a debate to be had regarding various aspects of the proposal at appeal and divergent views between the main parties regarding the acceptability of the scheme founded upon different planning judgements. Whilst an appeal potentially occurred as the culmination of a lengthy and complex history to the scheme where the main parties' positions became hardened over time, in my view no action or inaction taken by EDDC is demonstrative of unreasonable behaviour with reference to the approach in the PPG.
18. Having taken account of all other matters raised, for the foregoing reasons I therefore conclude that an award of costs is not justified in this instance.

Tom Bristow

Inspector