



Costs Decision

Site visit made on 3 September 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2024

Costs application in relation to Appeal Ref: APP/E3715/W/23/3332272 Binley Woods Service Centre and 64 Rugby Road, Binley Woods, Coventry CV3 2AX

- 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 Auto Easy Network for a full award of costs against Rugby Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing single and two-storey car sales, workshop and car wash premises, demolition of the existing two storey dwelling for the residential redevelopment of the site consisting of two apartment buildings and associated external works.
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Decision

1. The application for an 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 application was recommended for approval by the Council's officers. Members are not bound to accept the recommendation of their officers, however, this does not exempt them from following the PPG Guidance which says that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal.
4. Examples of unreasonable behaviour by local planning authorities 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; 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.
5. The Council's evidence is brief and comprises a description of the proposal and an assertion that its height, mass and density, in particular the middle section of the site, would be overdevelopment and out of keeping with the area. There is, however, no analysis of the characteristics of the area or identification of its overall quality, nor any analysis or clear explanation as to why the proposed development would cause harm in this location. Furthermore, there is no explanation as to what is unacceptable about the middle section of the site or clarification as to why it is unacceptable and harmful.

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6. I acknowledge that there is a subjective component to the assessment of design. For that reason, it is very important that a conclusion of harm on these grounds is fully explained. The Council's case, however, does not provide such an explanation and, therefore, does not specify how the proposal conflicts with Policy SDC1 of the Local Plan as claimed in the reason for refusal. Accordingly, in this respect, the Council has acted unreasonably by making vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis. Furthermore, in the absence of any other identified conflict with the development plan or national policy, or other material considerations which support the refusal of planning permission, the Council has acted unreasonably by preventing or delaying development which should clearly be permitted.
 7. The applicant also claims that by the Council not recognising the similarities of the appeal proposal with other developments on Rugby Road that it has permitted, it has been inconsistent in its decision making. Whilst the identified developments are of a different type to the proposed new apartments, comparisons could be made regarding the scale, mass and height. Nonetheless, the full details of those cases, including their design, are not before me. I am therefore unable to assess any direct comparability to the current appeal proposal and conclude that the Council has not determined similar cases in a consistent manner.
 8. Accordingly, whilst I have not found that the Council has acted unreasonably due to inconsistency of decision making it has acted unreasonably by making vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis. It has also behaved unreasonably by 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.
 9. Therefore, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

10. 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 Rugby Borough Council shall pay to Auto Easy Network, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Rugby Borough 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.

Elaine Moulton

INSPECTOR