



Costs Decision

Hearing Held on 15 June 2021

Site visit made on 16 June 2021

by Helen B Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 July 2021

Costs application in relation to Appeal Ref: APP/E2734/W/20/3254251 Former 1st Dental Laboratories, 112 Wetherby Road, Harrogate HG2 7AB

- 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 full award of costs against Harrogate Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of existing building and erection of a coffee shop to include a drive thru, car parking, access and landscaping.
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Decision

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

The submission for Euro Garages

2. The applicant seeks a full award of costs on a number of grounds. Firstly, that by refusing planning permission, the Council has prevented or delayed a development which should clearly be permitted having regard to the Development Plan, national policy and any other relevant considerations. Secondly it is submitted that the Council failed to provide evidence to substantiate each of the reasons for refusal and thirdly that the Council made inaccurate assertions about the proposals impact which are unsupported by objective analysis. Fourthly it is argued that planning permission was refused on a planning ground capable of being dealt with by a planning condition and lastly that the Council persisted in objections to a scheme which an Inspector had previously indicated to be acceptable.

The response by Harrogate Borough Council

3. The Council submits that Councillors may overturn the recommendation of Officers provided reasons are given, as in this case. It was not unreasonable for Councillors to refuse permission for the reasons stated, which are all material planning considerations to which members afforded due weight and with reference to the policies of the development plan. Consideration of the issues requires subjective judgements and given their local knowledge of the site it was not unreasonable for members to reach the conclusion they did.
4. The current scheme was refused by Members in regard to the impact on residential amenity. This was the reason that the previous Inspector dismissed the appeal. With regard to highway objections it should be noted that the

Highway Authority was critical of the previous Inspectors decision, feeling that road safety matters had been disregarded by that Inspector. The members were not acting unreasonably when they used their local knowledge of the site and this road junction to inform their decision.

Reasons

5. 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.
6. The applicants cost application and the Councils response were provided in written form before the hearing took place. Before the event, the Council decided not to defend their reasons for refusal, appearing at the hearing only to assist with the discussions on planning conditions.
7. In so doing, the Council failed to substantiate their reasons for refusal and their assertions about the impact of the proposal were not supported by objective analysis. The appellant's technical evidence was therefore undisputed.
8. Furthermore, the Council's decision not to defend their case, was in effect a recognition that the scheme should have been approved. Therefore, the decision to refuse planning permission prevented a development which clearly should have been permitted as it accorded with the development plan, national planning policy and other material considerations. Planning conditions were capable of addressing the issues raised, securing appropriate mitigation to protect the amenity of nearby residents.
9. With regard to the previous appeal for a drive thru coffee shop on the site, the Inspector concluded that the proposal would not cause highway safety issues or give rise to air quality concerns. The appeal was however dismissed because of the impact on living conditions for nearby residents.
10. The current appeal scheme has a smaller floor area than the refused proposal and the layout has been revised. Despite an Officer recommendation for approval and no technical objections from consultees, the application was refused. The three reasons for refusal concern highway safety, air quality and residential amenity, reasons unchanged from the previous application.
11. The Council have not provided any evidence to support their position. The reasons for refusal in relation to highways and air quality amount to persistence in objections in respect of matters which an Inspector has already found to be acceptable. I accept that members would have local knowledge of the area and the junction and many members would have personal experience of traffic issues in this location. However, it was unreasonable to persist with such objections, particularly as the floor area of the proposal had been significantly reduced.
12. Given the above, I find that the Council has demonstrated unreasonable behaviour which has resulted in the applicant incurring unnecessary cost in the appeal process. A full award of costs is justified.

Costs Order

13. 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 Harrogate Borough Council shall pay to Euro Garages Ltd, 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.

14. The applicant is now invited to submit to the 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.

Helen Hockenhull

INSPECTOR