
Costs Decision

Site visit made on 18 October 2016

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 21 November 2016

Costs application in relation to Appeal Ref: APP/N4205/W/16/3155631 7 Old Colliers Row, Colliers Row Road, Bolton BL1 7PS

- 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 Mr Jan Szulec for a full award of costs against Bolton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a new live/work unit to replace the existing garage.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
 3. The application for costs was made in writing by the appellant. The Council has been given the opportunity to comment, however no response has been forthcoming. The essence of the appellant's case is that the Council has behaved unreasonably and contrary to case law, has failed to identify harm and what causes that harm, failed to provide anything more than vague unsubstantiated assessments and failed to undertake a rational balancing act as to whether there are very special circumstances that outweigh the identified harm. Furthermore, there were no grounds for the highway reason for refusal and that it should not have been included on the decision notice.
 4. Dealing with the highway matter first, prior to determining the application the Council's Highway Engineer's views were provided in two consultation responses. The first of which sets out the need for all vehicles to enter and leave the site in forward gear due to the speed of vehicles travelling along the highway. In response to the second part of this consultation, the appellant submitted an amended plan with a view to demonstrating the scheme was acceptable in highway terms. It appears that some progress was made, insofar as the engineer accepted it was the best layout that could be achieved within the constraints of the site. However concerns remained in respect of the limited parking provision and difficulties that would arise from moving multiple vehicles off the site.
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5. The second consultation response is written in a manner which is not as clear as it could be, in that a series of conditions are requested in the event the case officer was minded to approve the application. However the Highway Engineer and indeed the case officer remained of the view that the proposed parking and access arrangements were not satisfactory. This was set out in the Officer Report and the second highway consultation response. Thus, I do not consider, despite the appellant's view that the second consultation response amounted to confirmation of the amended scheme being satisfactory. It follows therefore that the Council acted reasonably in setting out their concerns out as a reason for refusal and subsequently defending their stance at appeal. I do not consider the appellant has therefore incurred unnecessary expense in presenting their case.
6. It was clear that the appellant regarded the proposed development as inappropriate development. This view was consistent with the analysis found in the Council's Officer Report. The Framework is clear that this is harmful by definition and the Council set out their reasoning in the Officer Report as to whether the proposal would also cause greater harm to the purposes and openness of the Green Belt. Moreover, consideration has been given by the Council and reasons set out why the proposal would affect the character and appearance of the area. Whilst the appellant considers the scheme to amount to good design, notwithstanding my own findings, I consider the Council was entitled to express their reasoned judgement and has specifically identified areas of concern to substantiate their case.
7. Given the housing supply position, it is surprising the Council did not address the matter in determining the application, given the position presented at the Hill Lane¹ inquiry which would have been known when dealing with the application. Nevertheless, in correspondence with the appellant shortly after the Council issued their decision, the Council confirmed it did not have a five year supply of housing sites. This was prior to the appeal being lodged, which enabled the appellant to approach the appeal with the knowledge of the Council's position.
8. Although the Officer Report did not as a consequence address in detail whether Policy CG7AP Local Plan: Bolton's Allocation Plan (BAP) was relevant for the supply of housing or indeed out-of-date, I do however consider the Council did consistently set out their opinion that this policy reflected paragraph 89 of the Framework. The Council was entitled to arrive at this judgement given it is a matter for the decision maker to attach the amount of weight to the policy. As such, even though the appellant confers that paragraph 14 ought to have been engaged in this decision, having arrived at their judgement the Council was required to determine the application in accordance with the development plan unless material considerations indicate otherwise.² Furthermore as the appellant accepted in correspondence with the Council, irrespective of the development plan policies, the Framework remained a material consideration.
9. Notwithstanding this, the Council formed a view that the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Whilst, this

¹ Appeal Decision Ref: APP/N4205/W/15/3136446

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

approach has been employed earlier in the Council's analysis than case law³ establishes, it was not the Council's principal position which profoundly hinged on the proposal's conflict with Policy CG7AP of the BAP and the Framework.

10. I do not therefore consider the Council's approach, albeit out of tune with case law, to have resulted in unnecessary or wasted expense, given the appellant's acknowledgement that the appeal scheme amounted to inappropriate development which should not be approved except in very special circumstances. As with such cases, it is a matter of planning judgement as to whether the case specific very special circumstances that have been advanced by the appellant do or do not clearly outweigh the identified harm.
11. Despite the absence of five year supply of housing sites, the Council formed a view that the proposal would not significantly contribute to the borough's housing supply. Although the three roles of sustainable development have not been explored in detail by the Council, they did conclude that the other considerations taken together did not clearly outweigh the harm that was identified and that the very special circumstances necessary to justify the development did not exist. I am not therefore persuaded that the appellant has been put to any additional work beyond stating their case. I do not consider this equates to unreasonable behaviour by the Council.
12. I understand the appellant's frustration of not receiving the full context of the barrister's opinion obtained by the Council. Whilst it is not before this appeal; it clearly has influenced the Council's thinking. However, the Council is not obliged to share this with the appellant or indeed myself. It is therefore unclear how this has specifically resulted in unnecessary or wasted expense by the appellant.
13. Even if the appellant holds a different view regarding whether the Officer Report is fit for purpose and is unhappy with the Council's level of co-operation, given the parties submissions before me, I do not consider that it has resulted in unnecessary or wasted expense given the joint understanding that very special circumstances needed to exist in order for the appeal to be allowed.

Conclusion

14. Thus, I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance has been demonstrated.

Andrew McGlone

INSPECTOR

³ Cheshire East BC v SSCLG [2016] EWHC 571(admin)