
Costs Decision

Site visit made on 11 April 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 23rd May 2017

Costs application in relation to Appeal Ref: APP/A4710/W/17/3167169 Land adjacent 100 Willowfield Road, Halifax HX2 7NF

- 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 B Mahmood for a full award of costs against Calderdale Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for a Detached Dwelling (amended plans to approval number 14/01167/FUL).
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
4. Examples of substantive unreasonable behaviour referred to in the PPG 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;*
 - *failure to produce evidence to substantiate each reason for refusal on appeal;*
 - *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and*
 - *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.*

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

5. The Council's sole reason for refusal focussed upon the effect of the proposal on the privacy of occupiers of property on Willow Close. Whilst its officer report advised that the proposal was acceptable in this regard the Members took an opposite view. Although it is not necessarily unreasonable for a Council decision to differ from the advice given by its officers, it is necessary for its concerns to be substantiated by evidence.
6. There is no dispute that the distance between the proposed study window and the rear elevation of 18 Willow Close would, at 17 metres, fall slightly short of the minimum of 18 metres between 'main' and 'secondary' aspect windows referred to in Annex A to the Replacement Calderdale Unitary Development Plan (RCUDP) 2006. As Annex A forms part of the adopted development plan the Council was clearly justified in taking it into account in its decision. However, paragraph 8.9 of the RCUDP makes it clear that the role of Annex A is to provide '*...guidance...*' to '*...assist in...*' evaluating the acceptability of development proposals. This indicates that Annex A should not be relied upon as the only factor in determining the acceptability or otherwise of a proposal.
7. Furthermore, the Council has produced no substantive evidence beyond its reliance on Annex A to justify its refusal of permission. Indeed, paragraph 3.1 of its statement indicates that '*...whilst there would be a shortfall of 1m with sufficient screening and the properties on Willow Close being at a higher level, there would be no direct overlooking*'. Given its acceptance that the proposal would not cause such overlooking I find that, despite the need to consider Annex A in its decision, the Council's refusal of permission on privacy grounds was unreasonable. This unreasonable behaviour has caused the appellant to incur unnecessary expense by submitting an appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Calderdale Metropolitan Borough Council shall pay to Mr B Mahmood, 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.
10. The applicant is now invited to submit to Calderdale Metropolitan 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.

Jonathan Clarke

INSPECTOR