
Costs Decision

Site visit made on 28 February 2017

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 25 May 2017

Costs application in relation to Appeal Ref: APP/N4205/W/16/3164551 Toppings, Foxholes Road, Horwich, Bolton BL6 6AL

- 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 N Holt for a partial award of costs against Bolton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing dwelling and construction of two proposed detached dwellings.
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. Paragraph 049 of the NPPG states that examples of unreasonable behaviour by local planning authorities includes 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 not determining similar cases in a consistent manner.
 4. The appellant considers that the Council's second reason for refusal is vague and imprecise in that it refers to "the existing highways surrounding the application site" and that it is not clear which roads are being referred to.
 5. The application was refused by the Council's Planning Committee, contrary to an officer recommendation of approval. The Highway Authority did not object to the proposal. I have been provided with a copy of the minutes of the Planning Committee however these do not provide any additional information regarding the concerns of Councillors beyond the wording of the reasons for refusal.
 6. I agree with the appellant that the wording of the second reason for refusal is vague and generalised and whilst reference is made to surrounding highways being sub-standard in terms of width, horizontal alignment, forward visibility and lack of footways, it is not clear which highways are being referred to or how the proposed development would have a detrimental impact on highway safety and the road network.
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7. Following the refusal of the application the appellant commissioned an Appeal Statement on Highways and Transport Matters (Highways Statement) which was submitted with the appeal. The Highways Statement considers in some detail the surrounding highway network and the impact of the proposal on it. In the main the findings of the Highways Statement have not been disputed by the Council and the Council has produced no substantive evidence of its own to contradict that of the appellant and to substantiate its reason for refusal relating to highways.
8. Though I note that concerns regarding the local road network and the impact of the proposal on it were raised by a significant number of interested parties, in the absence of any substantive evidence or objective analysis to support these assertions, I consider that the Council has behaved unreasonably in failing to produce evidence to substantiate each reason for refusal.
9. I also consider that the Council has not determined similar cases in a consistent manner. This is due to the fact that the Council's previous refusal of two dwellings on the site in April 2016 did not include a reason for refusal relating to the impact of the proposal on surrounding roads, despite the impact appearing to be identical to that of the appeal proposal (Ref 96070/16). Though I note that the earlier decision was delegated to Council Officers, it was nevertheless a determination by the Council.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. For this reason, and having regard to all matters raised, a partial award of costs is justified.

Costs Order

11. 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 Bolton Metropolitan Borough Council shall pay to Mr N Holt, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Bolton 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.

Beverley Wilders

INSPECTOR