

Costs Decision

Inquiry held on 23 -25 May 2017

Site visit made on 25 May 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 13 July 2017

Costs application in relation to Appeal Ref: APP/V4250/W/16/3161656 Land East of Rectory Farm, Rectory Lane, Standish, Wigan WN6 0XD

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by HIMOR (Land) Ltd for a full award of costs against Wigan Metropolitan Borough Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for residential development.
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Decision

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

The submissions for HIMOR (Land) Ltd

2. The applicant submits that the Council has acted unreasonably in a number of ways. These include preventing or delaying development that 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 reasons for refusal; vague, generalised inaccurate assertions about the proposal's impact; not determining similar cases in a consistent manner; persisting in objections where an Inspector has previously indicated that the issue is acceptable and introducing a new reason for refusal.
3. The applicant contends that the Council reported the planning application to Committee in July 2016 with a recommendation for approval. The application was withdrawn from that Committee as the Council felt that they needed time to consider recently issued household projections. This delay was unjustified and led to the need to appeal against the failure to determine the application.
4. Secondly the Council failed to consider properly or at all the 2015 Inspectors' decisions into appeals at Rectory Lane and Lurdin Lane¹. In particular the Council failed to consider that the Inspector had found these developments to accord with the development plan.
5. Furthermore the Council failed to consider and apply the development plan properly. Any proper consideration of the development plan and the 2015 appeals would have led the Council to the same conclusion.

¹ Appeal Refs APP/V4250/W/15/3003142 and APP/V4250/W/14/3001130

6. In addition the Council failed to consider the harm that would occur as a result of the proposal and to provide evidence of harm. The Council on its own case, failed to apply the tilted balance in the context of Policy SD1 and failed to consider the difference between its application as part of the development plan and in the terms of the development plan as opposed to the application under the Framework paragraph 14. Even if applied under paragraph 14, in the absence of demonstrating tangible harm the Council could not even begin to discharge the onus on it under the tilted balance. The Council's reason for refusal was clearly unreasonable.
7. Finally the attempt to introduce and pursue additional reasons for refusal was further unreasonable.

The response by Wigan Metropolitan Borough Council

8. The Council does not accept that it has acted unreasonably. The Council's Proof of Evidence details the reasons for non-determination. The Council accept there was delay in determining the application but the reasons for this were entirely sensible and not evidence of unreasonable behaviour.
9. The Council was aware of the Lurdin Lane and Rectory Lane appeals and had regard to them. The consideration and application of development plan policies may be different between the parties, but this does not render the Council's approach unreasonable, nor is there any hint in the Lurdin Lane decisions that the Council's approach is or was unreasonable.
10. The Council contend that they did consider the harm in particular in relation to the spatial strategy. In terms of the application of Core Strategy Policy SD1, the Council disagrees with the applicant's interpretation and application of this policy. It is plain from the Officers report, the Statement of Common Ground and written evidence that the Council considered and applied the tilted balance. Whether the tilted balance indicated approval or refusal is a matter of planning judgment with differences in professional opinion not at all unusual.
11. The reason for refusal was not unreasonable.
12. Finally in relation to the applicant's claim that the Council introduced additional reasons for refusal, this can only relate to the accessibility point. The question of accessibility was a live issue in any event so the distances from services and facilities would have been addressed. Furthermore even if that argument was unreasonably introduced it did not prolong the inquiry to an extent that the appellant has incurred unnecessary costs.

Reasons

13. 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.
14. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay². The PPG

² PPG Paragraph 028 Reference ID:16-028-20140306

provides examples of unreasonable behaviour for both procedural and substantive reasons in paragraphs 047 and 049 of the document.

15. The Council in written evidence explained the reasons behind the failure to determine the original planning application. It is important to consider the chronology of events. The application was originally submitted in December 2015. Following a period of time to address the issues raised and discuss technical details, a report recommending approval was to be taken to Committee on 19 July 2016. It was however withdrawn from the agenda because revised household projections were issued on 12 July 2016 which the Council felt it was necessary to consider as part of the preparation work for the Greater Manchester Spatial Framework (GMSF). I am unclear from the evidence why this resulted in the delay as the Council has an adopted Core Strategy which sets down the housing requirement for the Borough. The ongoing work on the GMSF was therefore not relevant and not determinative to the application.
16. It was indicated to the applicant that the application would then go to the August Committee but this did not happen. The Council informed the applicant that the application would instead be going to the October Committee. On this understanding the applicant agreed an extension of time on 20 September 2016 to the 14 October 2016. However again the application was not presented to that Committee. I have no evidence that an explanation for this further delay was given. Accordingly the applicant felt there was no option but to appeal due to the Council's failure to determine the application some 10 months after its original submission.
17. The Council in written evidence indicated that it was not until the 30 October 2016 that the Greater Manchester objectively assessed need was published and therefore the application could not have been determined until after that time. However I have already stated that it was not necessary to have this draft figure in order to do this. I therefore consider that the Council acted unreasonably in delaying the determination of the application for this reason alone.
18. With regard to the 2015 appeal decisions, the Council referred to these in written evidence but only briefly in respect of the conflict with the approximately 1000 houses threshold in Policy SP4. Detailed consideration of the decision as a whole was not undertaken. In contrast the appellant considered these decisions in depth.
19. In the two appeals the Inspector considered that the development proposals would comply with the development plan and would not cause harm to the spatial strategy. The main arguments seem to me to be little different to the case before me. Whilst I accept that the evidence presented to the previous Inspector would not have been the same, not least because it was a different appellant, this does not alter the fact that the same objections and arguments that a previous Inspector had rejected were being pursued again. The Council's approach demonstrates that they have not determined similar cases in a consistent manner. Furthermore bearing in mind I have allowed the appeal, the Council have prevented development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. I therefore consider that the Council has acted unreasonably.

20. In terms of the consideration and application of development plan policies, the Council and the appellant expressed different views. Matters are often subject to professional judgment and in itself this disagreement does not represent unreasonable behaviour.
21. I consider that the Council in written evidence clearly considered and provided evidence of the harm that they believed would result if the development were to be permitted. In particular this is provided in pages 8 -12 and page 31 of Mr Kearsley's proof. This provides clear evidence to substantiate the Council's reason for refusal.
22. In relation to Policy SD1 of the Core Strategy and its application I have considered this in my decision. I have disagreed with the applicant that this policy requires a tilted balance as part of the development plan consideration excluding other Core Strategy policies. In this regard the Council has not acted unreasonably.
23. Finally I turn to the matter of the Council pursuing a new reason for refusal with regard to the accessibility of the appeal site. I agree with the applicant that this was new evidence unrelated to the original reason for refusal and therefore an act of unreasonable behaviour on the Council's part. However it did not result in a significant amount of further Inquiry time and therefore resulted in no extra cost to the applicant.
24. In summary, I have found unreasonable behaviour on the part of the Council in relation to certain matters outlined in the applicants claim but not all. Whilst I have found that the Council provided evidence to support their case and substantiate the reason for refusal, I have found that the Council acted unreasonably in delaying the decision. This led to the applicant submitting the appeal and incurring the cost of the appeal process. Furthermore I have found that the Council has not determined similar cases in a like manner and has prevented development that should clearly have been permitted. Again this gave rise to the appeal being made and therefore resulted in unnecessary expense for the applicant.
25. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

26. 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 Wigan Metropolitan Borough Council shall pay to HIMOR (Land) Limited, the full 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.
27. The applicant is now invited to submit to Wigan 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.

Helen Hockenhufl

INSPECTOR