
Costs Decision

Site visit made on 16 December 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2020

Costs application in relation to Appeal Ref: APP/B2355/W/19/3238246 Orient One, New Hall Hey Road, Rawtenstall BB4 6AJ

- 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 Adeel Saleem for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of the change of use from retail (Use Class A1) to restaurant/banqueting hall/wedding venue (Sui Generis), and installation of new windows and door screens.
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Decision

1. The application for a full award of costs is granted.

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. The Guidance is clear that a Council could be vulnerable to an award of costs against it if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, a Council could be vulnerable if it fails to produce evidence to substantiate each reason for refusal.
3. The costs application alleges:
 - The Council's Planning Committee disregarded and ignored the decision made by the Planning Inspectorate with regard to highway impact and safety.
 - The Committee failed to recognise that the only reason for refusal, that was upheld at appeal, had been overcome by the removal of the proposed car park extension.
 - The Council failed to produce substantive evidence for each reason for refusal
 - The Council has made vague, generalised and inaccurate assertions about the proposals impact, unsupported by objective analysis, and
 - The Council refused planning permission on grounds capable of being satisfied by a planning condition.

Appeal decision

4. The appeal decision considered the effects of the proposal on both highway safety and living conditions of existing residents. It came to several clear conclusions on where the scheme would comply with policy and where harm was found. The Inspector dismissed the appeal on one ground only and provided a clear indication that harm to neighbouring living conditions was concerned with those properties in Railway Terrace.
5. The officer report set out these conclusions to Planning Committee. The Council has explained that Members did not consider that the proposal adequately addressed the Inspector's concerns. However, it is clear to me that the Inspector was only concerned with the effect of the proposal on the dwellings part of Railway Terrace. The Inspector concluded that the noise and disturbance to residents of Railway Terrace would be significant. The use of the car park would lead to a discernible increase in noise and disturbance directly behind the dwellings. This analysis is focused on the effect of the new car park on the living conditions of residents of Railway Terrace.
6. The Committee minutes do not reflect that adequate consideration of the appeal decision was taken into account. Consequently, it is not in evidence that the Committee applied the necessary or appropriate weight to the Inspector's findings.

Revised position

7. It is recognised that the removal of the car park had the potential to raise new material considerations in regard to the reduced car parking capacity. However, this matter was addressed through the deletion of the mezzanine floor, removal of the second function room and imposition of safeguarding conditions. Therefore, the material considerations that resulted from the removal of the car park were taken into account by the Council's officer's and fully considered and addressed in the revised context.
8. The assertion that the Committee failed to recognise that the removal of the car park resolved the only outstanding issue, relies on the fact that this did not materially alter other elements of the scheme. However, the mezzanine and second function room were originally part of the second scheme. Consequently, only through assessment and discussion with the Council and statutory consultees and amendment were these associated considerations addressed.
9. Consequently, for the above reasons, I do not concur with the appellant that the removal of the car park alone should have directed the Council to allow the proposal.

Evidence to support each reason for refusal

10. The Committee were entitled to disregard the advice of officers and make their decision. Members undertook a site visit before making a decision. However, the limited minutes do not reflect vigorous interrogation of the recommendation or evidence. Also, the Council has not since provided a more complete contemporaneous version of events to corroborate the comments of Mr Willock¹ that Members were careful or comprehensive in considering the application. Furthermore, there is no indication that Members requested

¹ Robert Halstead Chartered Surveyors & Town Planners letter 25 November 2019

additional survey work or further assessment by officers which might have provided evidence to corroborate their concerns. Furthermore, the Council's Statement of Case includes limited evidence to substantiate its reasons of refusal especially in regard to harm to living conditions. The Council's analysis of the highway safety impact is unconvincing and failed to identify where harm to highway safety would manifest in its assertion that the car park would not accommodate all of the needs of the proposal.

11. I have had regard to the many representations made against the proposal. These have provided some evidence anticipating the impact of the development. I have seen the photographs of local parking and social media references to anti-social behaviour in regard to Eastern Pavilion. However, much of this evidence is anecdotal and speculative. It therefore can only be of limited application to the merits of the case. As such, the evidence taken together, did not convince me that the proposal would be significantly harmful to living conditions or highway safety. The Council's evidence is mostly circumstantial and consequently fails to be substantive. The reasons for refusal are therefore not substantiated with meaningful evidence. Accordingly, the Council has failed to reasonably substantiate its reasons for refusal.

Vague or inaccurate assertions

12. Similar to the above, there is a general lack of evidence to substantiate the Council's case. Accordingly, the conclusions drawn by the Council are vague. Based on my conclusions in my main decision I have found the Council has made inaccurate assertions. This resulted in flawed reasoning in finding conflict with the Development Plan.

Planning conditions

13. I have found in my main decision, that the impact of the development would be adequately addressed through the use of conditions.

Conclusion

14. I have found that the Council has failed to apply proper weight to the appeal decision and the advice of its officers and the Highway Authority. I have also found that the decision to determine the proposal contrary to the officer's recommendation was made without substantive evidence. This has been further borne out by the weakness of the Council's Case. This illustrates that the Council's decision was made without sound foundation and accordingly represents unreasonable behaviour.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated. Furthermore, this has resulted in unnecessary and wasted expense for the appellant in making this appeal as described in the Guidance.

Costs Order

16. In the 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 Rossendale Borough Council shall pay to Mr Adeel Saleem, the full cost of the appeal proceedings described in the heading of this decision, relating to the

refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The applicant is now invited to submit to Rossendale 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.

Ben Plenty

INSPECTOR