
Costs Decision

Site visit made on 7 January 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Costs application in relation to Appeal Ref: APP/H4315/W/19/3241111 8 Red Cat Lane, Crank WA11 8RU

- 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 Punch Partnerships (PML) Ltd for a full award of costs against St Helens Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for construction of two dwellings (Use Class C3) comprising two detached dwellings to the rear of the Red Cat Public House, together with the reconfiguration of the Public House car park, new access for the proposed dwellings off Highfield Drive, associated car parking, landscaping and other ancillary works.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) 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.¹
3. Unreasonable behaviour can relate to procedural matters (ie the appeal process) or substantive matters (ie issues related to the planning merits of the appeal).²
4. Examples of behaviour by local planning authorities that may be deemed to be unreasonable in respect of procedural and substantive matters are provided in the PPG.³
5. The appellant is seeking an award of costs on substantive grounds only, with particular regard to reasons for refusal 1 and 3. They consider that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is suggested that the Council has proposed vague, generalised and inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
6. In considering the concerns of the Highways Officer, the timing of the surveys and the photographic evidence submitted with representations, the Council was

¹ PPG Paragraph: 030, Reference ID: 16-030-20140306.

² PPG Paragraph: 031, Reference ID: 16-031-20140306

³ See PPG Paragraphs 047, Reference ID: 16-047-20140306 and 049 Reference ID: 16-049-20140306.

not satisfied that the proposal would not lead to increased on-street parking in the area, due to the loss of public house car parking spaces, or that deliveries to the site could be undertaken in a safe manner. Although I have reached a different conclusion to that of the Council on these matters, the Council was entitled to reach the judgement it made. For this reason, I consider that the Council did not behave unreasonably in this regard.

7. In respect of the Green Belt, the Council considers it likely that the strip of Green Belt shown as being landscaped on the plans would be likely to be absorbed into the rear gardens of the proposed dwellings. I concluded in my decision regarding the proposal that there is no development proposed in the Green Belt and therefore the proposal does not include any inappropriate development in it. If, in the future, the Council considers any of the land within the Green Belt has been taken into the residential gardens of the dwellings, it has the powers to take suitable enforcement action.
8. With regards to the Green Belt reason for refusal, I consider that the Council's assessment of this matter was not accurate and therefore reason for refusal No 3 should not have been attached to the Council's decision Notice. As such, I consider that the Council behaved unreasonably in respect of this matter, which has resulted in wasted time and expense for the appellant in the appeal process having to deal with this issue.
9. As regards the effect of the proposal on the character and appearance of the area and living conditions of future occupiers, again, although I reached different conclusions, I consider that the Council was entitled to reach its judgements on these matters.

Conclusion

10. Bearing in mind the matters outlined above, although I have reached different conclusions to the Council on highways, living conditions and Green Belt matters, the Council could still have refused the application on the grounds of its judgements on highways, living conditions and character and appearance of the area. Therefore, the Council's behaviour was not unreasonable. However, I have concluded that the Council's assessment of the effect of the proposal on the Green Belt was not well founded and therefore reason for refusal No 3 should not have been attached to the decision notice. In this regard I therefore find that unreasonable behaviour by the Council, resulting in the appellant incurring unnecessary and wasted expense in the appeal process, as described in the Planning Practice Guidance, has been demonstrated and that 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 St Helens Metropolitan Borough Council shall pay to Punch Partnerships (PML) Ltd, the costs of the unnecessary time spent and the expense incurred by the appellant in the appeal proceedings, described in the heading of this decision, as a result of the unreasonable behaviour outlined.
12. The appellant is now invited to submit to St Helens 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. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Williamson
INSPECTOR