



Costs Decision

Site visit made on 27 January 2020

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

**Costs application in relation to Appeal Ref: APP/R2330/W/19/3240964
Land adjacent to Back Owen Street (adjacent to Brandwood Works),
Accrington BB5 6AU**

- 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 J & R Plant Hire UK for a full award of costs against Hyndburn Borough Council.
 - The appeal was against the refusal of planning permission for erection of 6no. supported living units (C2) with associated parking and communal area.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters during the appeal and substantive matters relating to the matters under appeal. The substantive matters 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. Other substantive matters include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable and not determining similar cases in a consistent manner. The application for costs broadly relates to each of these matters listed as examples.
4. The reason for refusal set out in the decision notice is specific to the application and the harm identified by the Council in terms of the development, with two reasons for refusal identified with reference to conflict with policies of the Hyndburn Core Strategy (CS), adopted January 2012, the Hyndburn Local Plan Development Management DPD (DM DPD), adopted January 2018, and the National Planning Policy Framework (the Framework).

5. With regard to the above, the Council's evidence includes a statement of case which seeks to substantiate the reasons for refusal, given that the decision taken at the Council's Planning Committee was different to officer recommendations. It is not unreasonable of itself for Members of a Planning Committee to take a different view from officers provided such an approach can reasonably be justified and explained, including with evidence where necessary. However, the appeal proposal to which this costs decision relates is broadly the same as a scheme that was subject of a previous appeal decision¹ and which, therefore, is pertinent in this case. The main difference is the appellant having sought to address the concerns of the previous Inspector by securing provision to deliver social housing through the provision of a completed and correctly executed planning obligation. It will be seen from my appeal decision that I am satisfied that the concerns of the previous Inspector have been overcome and subject to conditions, I found the proposal to otherwise be acceptable in all respects.
6. The first reason for refusal in relation to the decision subject of this costs appeal relates to the suitability of the location for the proposed development. The Council evidence elaborates on this matter in terms of the suitability of the living environment for future residents at the rear of the existing terraces and in close proximity to a railway line, and the relationship with occupiers of neighbouring properties in terms of overlooking. Whilst it is reasonable that such issues can ordinarily reflect matters of judgement, it is evident that the Council when considering an almost identical proposal as part of the previous application subject of the first appeal did not raise the same concerns. Furthermore, the previous Inspector did not consider such matters to warrant further assessment as one of the main issues of her appeal that influenced its outcome.
7. It follows from the above that the Council's introduction of the first reason for refusal on an almost identical scheme to that which had already previously been considered by the Council and an Inspector, where that element of the scheme had previously been considered to be acceptable, does constitute unreasonable behaviour. In reaching that view, I note that the Council has not provided any substantive evidence as to any material circumstances that may have changed since the first application and appeal decision so as to justify why its own judgement on such matters was different with respect to the second application and the resultant appeal subject of this costs decision.
8. The second reason for refusal in the Council's decision notice relates to matters of highway safety. In that respect, the Council evidence in seeking to substantiate the reason for refusal is reliant upon a statement prepared by DTPC (Northwest) dated October 2018 which was also before the previous Inspector. It is evident from the previous Inspector's decision that she had fully addressed the matters raised in that evidence in reaching her conclusion that 'the proposal would have an acceptable effect upon the safety of drivers, cyclists and pedestrians'. In that regard, the Council has not provided any evidence as to a material change in circumstances since the previous appeal decision so as to justify why it has persisted in objections to that element of the scheme. Consequently, I consider that the Council behaved unreasonably when imposing the second reason for refusal and persisting with its objections until the outcome of the appeal subject of this costs decision.

¹ Appeal Ref: APP/R2330/W/18/3207105 – Dismissed – 19 December 2018

9. The Council have drawn my attention to the previous appeal having been subject to a costs application which was refused by the previous Inspector. However, such matters are not an influential factor on my conclusions in this costs decision as the context of the costs application before me is different in so far as it relates to a second application for broadly the same scheme. In such circumstances, it is necessary that the Council provide a reasonable explanation and justification as to why they have taken a different view to their own conclusions in the first application and persisted with objections to elements of the scheme where a previous Inspector found no harm. The Council has failed to do so in this case and therefore, the unreasonable behaviour is clear.
10. Turning to the matter of unnecessary or wasted expense, the Council's unreasonable behaviour has been demonstrated in 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. Such an outcome resulted from persisting in objections to elements of a scheme which an Inspector has previously indicated to be acceptable and by not determining similar cases in a consistent manner, with no substantive justification for the Council taking a different view in those respects on the application subject of this costs decision. In such circumstances, it is evident that an appeal in this case could have been avoided if the Council's unreasonable behaviour had not taken place. The applicant, therefore, suffered wasted expense in pursuing the appeal and a full award of costs is justified.

Conclusion

11. I conclude that unreasonable behaviour of the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in so far as an appeal could have been otherwise avoided. The application for the award of costs, therefore, succeeds and a full award of costs is made specific to the wasted expense incurred by the applicant in pursuing the appeal to its end. The determination of the specific costs in that respect falls outside of my jurisdiction.

Costs Award

12. In exercise of my 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 powers enabling me in that behalf, IT IS HEREBY ORDERED that Hyndburn Borough Council shall pay to J & R Plant Hire UK the full costs incurred in appeal Ref APP/R2330/W/19/3240964. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Hyndburn 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.

Gareth Wildgoose

INSPECTOR