
Costs Decision

Site visit made on 21 July 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2020

**Costs application in relation to Appeal Ref: APP/W4223/W/20/3249428
Vamasaki Restaurant/Bull's Head/Grains Bar, Ripponden Road, Oldham
OL4 2JY**

- 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 Yasir Beg of Eltonwell Property Limited for a full award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for a residential development including change of use from A3 to C3.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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.
3. Paragraph 049 of the PPG¹ states that examples of unreasonable behaviour by local planning authorities 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; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and acting contrary to, or not following, well-established case law.
4. There are several elements to the applicant's claim of unreasonable behaviour, which broadly fall within the scope of these examples but which essentially boil down to the Council acting unreasonably in refusing the planning application. They are that the Council:
 - Failed to take account of all material information submitted with the planning application, in particular in response to the 'notice of intention to refuse' e-mail from the Council. It is implied that had the Council taken full account of this information it would, or at least should, have granted planning permission for the proposal;
 - Misinterpreted the status of part of the site as previously developed land;

¹ Reference ID: 16-049-20140306

- Misapplied the exceptions to 'inappropriate development in the Green Belt' set out in the National Planning Policy Framework (the Framework);
 - Failed to consider the proposal as infill development; and
 - Failed to apply the 'tilted balance' set out in the Framework in the light of the Council's inability to demonstrate a 5 year supply of deliverable housing land.
5. Other than the first point, the issues raised in the applicant's claim of unreasonable behaviour were also central to determining the appeal. As a consequence they are dealt with at some length in my main appeal decision. I shall return to the first point shortly, but first briefly summarise my findings on the other elements of the claim.
6. The applicant suggested that the part of the site referred to as Site B was previously developed land (as a consequence of its past use, rather than built structures), while the Council took a contrary view. On the balance of the evidence before me, I found that Site B did not meet the Framework's definition of previously developed land. I do not therefore find that the Council acted unreasonably in this regard.
7. The proposed buildings would have caused substantial harm to the openness of the Green Belt, and therefore would have been inappropriate development not covered by the exception set out in Paragraph 145(g) of the Framework. It was not suggested that any other exceptions in Paragraph 145 would have applied to the proposal. For reasons set out in my main decision, I found that the applicant's appeal evidence itself misinterpreted the Framework in respect of the purposes of the Green Belt and the inappropriate development exceptions, and case law in respect of assessing effects on openness. I consider that the Council interpreted and applied the Framework correctly, and therefore find that it did not act unreasonably in this regard.
8. Assessment of whether a site would represent infill development is a matter of planning judgement for the decision maker. In the context of the development proposal, I understand entirely why the applicant would want the Council to treat the site as being an infill site. However, in my view the location and surroundings of Site B were such that it would represent an extension into the countryside, albeit a relatively small one in terms of its land area, rather than an infill development. I therefore consider that in coming to the same conclusion the Council did not act unreasonably.
9. It was not disputed that the Council could not demonstrate a deliverable 5 year housing land supply. However, I found that the proposal would have been, in the Framework's terms, inappropriate development which would have caused significant harm to the openness of the Green Belt. In such circumstances the Framework is clear that the 'tilted balance' is not engaged. I consider that the Council interpreted the Framework correctly, and therefore again I find that it did not act unreasonably in this regard.
10. Returning finally to the applicant's first point, I have had regard to the letter submitted in response to the Council's notice of intended refusal. While it represented an attempt to do so, it did not substantively address the Council's fundamental concerns that the proposal would be inappropriate development, that none of the exceptions in the Framework would apply, or that the

proposed buildings would not be in keeping with the character of the surrounding area. In the face of this submission, the Council maintained its stance and refused to grant planning permission. This was not unreasonable in my view, as none of the evidence submitted supported the proposal in terms which I found persuasive, and it is relevant to this costs decision that in determining the appeal I found in the Council's favour on all of these points.

11. Paragraph 050 of the PPG² indicates that '*where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application*'. For the reasons summarised above, and set out in greater detail in my main appeal decision, I consider that precisely describes the circumstances in this case.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

² Reference ID: 16-050-20140306