



Costs Decision

Hearing Held on 13 October 2020

Site visit made on 5 November 2020

by Roger Catchpole BSc (hons) PhD MCIEEM IHBC

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

Decision date: 6 November 2020

Costs application in relation to Appeal Ref: APP/N4205/W/20/3249126 Units 40-45 Waters Meeting Business Park, Britannia Way, Bolton BL2 2HH

- 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 Michael Boys (B&E Boys Brother Investments Ltd) for a full award of costs against Bolton Metropolitan Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the construction of 5 No Units for B1/B2/B8 usage together with associated access road, service areas, car parking and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance 2019 (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The application for costs was made by the applicant with reference to a refusal to grant permission for the construction of 5 no. units for B1/B2/B8 usage together with associated access road, service areas, car parking and landscaping that was contrary to the recommendation of the Council's own officer.
4. The applicant believes that the Council acted unreasonably because it failed to provide any evidential justification to depart from the technical evidence provided by independent consultants as well as the views of its own officers. The applicant maintains that planning committee members had no other informed, expert-based opinion on which to base their decision and consequently had no proper basis for disagreeing with the evidence. The applicant also believes that planning permission was unreasonably withheld for a scheme that is consistent with the development plan.
5. Taken together these perceived failings risk an award of costs on substantive grounds because of the alleged failure of the Council to produce evidence to substantiate its reason for refusal on appeal, its reliance on vague and generalised assertions about the proposal's impact that were not supported by

- any objective analysis and that it prevented a development that should have been permitted.
6. The Council maintains that it is not bound to accept the recommendations of its officers and that Cllr Walsh was able to provide local knowledge as well as a first-hand account of the reasoning behind the requirement for a link road at the Hearing. In support of this position, it highlights the fact that Cllr Walsh was present at the planning committee meeting when the previous permissions for the Crompton Way/Bolton Point site were granted.
 7. Whilst I accept that the Council is not bound by the recommendations of its officers there are fundamental issues with the approach that was taken in the determination of this case, as set out in my appeal decision¹. By the Council's own admission in its rebuttal of this application, it is clear that the contents of a s106 planning obligation, dated 26 November 2014, were taken into account. It also confirms that the conflict with policy P6AP of Bolton's Allocations Plan 2014 that led to the refusal was explicitly linked to impacts on the highway network.
 8. Whilst I appreciate that the provision of the link road has been a long-standing ambition of the Council, I found no reasonable grounds for refusing the scheme on the basis that the proposed layout would prevent its delivery. Moreover, I only found negligible materiality and weight could be attributed to an obligation that could still be enforced and which is, in any event, related to a wholly different planning application. More fundamentally, the decision sought to rely on highway impacts that were not substantiated by any technical assessment or in any way linked to the proposed scheme.
 9. I do not doubt the significant local experience that Cllr Walsh brings to bear as a long-standing member and chair of the planning committee as well as a local resident who uses the local road network on a regular basis. However, I do not find that his evidence provided an adequate or objective basis for the reason for refusal because it did not address the specific impacts that would arise from the proposed development but rather the impacts relating to a different development that had already been completed. Neither does the Council's statement of case offer any greater substantiation but instead relies upon generalised comments from a case officer's report associated with the housing scheme to the north (Ref: 91081/13).
 10. Bearing in mind the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004 that requires all development to be determined in accordance with the development plan unless material considerations indicate otherwise, I find that the Council has acted in an unreasonable manner by not substantiating its reasons for refusal of the scheme on its individual planning merits.
 11. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process.

¹ APP/N4205/W/20/3249126

12. As the Council saw fit to rely upon the generalised impacts of a different scheme and failed to address the issues at hand, I am left in no doubt that the Council prevented a development that should have clearly been permitted. Added to this, and notwithstanding the limited materiality of the 2014 obligation in the nexus of the current scheme, is the fact that the Council could not adequately defend its position that the proposal would prevent the delivery of a link road when pressed at the Hearing.
13. Given the above, I conclude that the Council acted unreasonably on the matters set out above. As such, the appeal could have been avoided and this has directly caused to applicant to incur unnecessary and wasted expense in the appeal process. As this relates to the whole of the appeal process, a full award of costs is justified.

Costs Order

14. 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 Bolton Metropolitan Borough Council shall pay to Mr Michael Boys (B&E Boys Brother Investments Ltd), the full costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to Bolton 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. In the event that 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.

Roger Catchpole

INSPECTOR