
Costs Decisions

Site visit made on 9 December 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

**Costs application in relation to Appeal Ref: APP/P4225/W/20/3249726
Site of former New Ladyhouse Mill, land of Stone Street, Milnrow,
Rochdale OL16 4JD**

- 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 Rochdale Metropolitan Borough Council for a full award of costs against Drum Developments (North West) Limited.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 40 new dwellings and conversion of the mill building into 6 apartments together with the formation of a new access and bridge from Stone Street, landscaping improvements to the bank of the River Beal and other associated works and infrastructure.
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Decision

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

The submission by Rochdale Metropolitan Council

2. The applicant submits that the appellant has shown unreasonable behaviour in terms of delays in providing information and failure to adhere to deadlines, only providing relevant information at appeal stage.
3. The applicant also claims that the appellant introduced fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen and also provided information that is shown to be manifestly inaccurate or untrue.
4. In particular, the applicant states that they did not receive the statement of case from the appellant within the required deadline and this included new evidence. This incurred unnecessary expense to the applicant through the re-consultation and renotification process. The applicant also advances that there are contradictions about the positioning of the proposed acoustic fence.

The response by Drum Developments (North West) Limited

5. The appellant has maintained that they have not acted unreasonably.
6. They have advised that the delay in circulating some of the appeal material was due to technical issues arising from new working practices at the beginning of the Covid-19 pandemic. They have drawn attention to their apology and resolution of the matter at the earliest possible time. They have also

- highlighted that they were agreeable to deadlines being extended to enable a response by the applicant.
7. The appellant has advised that the evidence submitted to the appeal had been updated to reflect the current situation and would have been submitted to the applicant had they shown any inclination to determine the planning application prior to the appeal being lodged.
 8. The appellant also asserts that the costs associated with the applicant's decision to outsource Arboricultural advice is irrelevant as it would have been covered by the planning application fee. They highlight that as it was a matter for the appeal it would have required consideration in any event. They suggest that contrary to the applicant's assertion, that evidence was not actually the subject of the delayed submission.
 9. The appellant considers that regardless of the timing issues raised, the applicant would have required the same amount and type of resource to consider the appeal material. Consequently, the appellant advances that the only additional costs that could be attributed to the delay in submission of some appeal material would relate to the consultation with interested parties.
 10. The appellant maintains that any differential in the acoustic fence details were only raised at appeal stage although the applicant had been in receipt of those details throughout the 3 year period. Any differential was minor and could have been addressed through a planning condition.

Reasons

11. It is evident from the submissions before me that the planning application subject to this appeal has been the subject of a protracted period of determination. Ultimately, the applicant failed to determine the application within the nationally prescribed time frames as well as those timeframes which were subsequently agreed. Certainly, from the evidence before me it is clear that the delay during the latter stages of the determination period were on the applicant's part, not the appellant. That undoubtedly triggered this particular appeal.
12. It is evident that the appellant had endeavoured to ensure the necessary information was before the applicant to enable it to make its final determination.
13. Furthermore, I am satisfied that the reasons for the delay in appeal material being circulated was due to exceptional circumstances at the beginning of the Covid-19 pandemic. I am also satisfied that relevant parties were given the opportunity to consider that evidence. That did result in the need for further consultation with interested parties and there would be costs associated with that. Nonetheless, I do not find that to be unreasonable behaviour on the part of the appellant.
14. The scope of the applicant's subsequent opposition to the appeal scheme fell well beyond the appreciation of the appellant. It was the appellant's prerogative to make the best case they could for their appeal. As this was an appeal against non-determination and given the time that had elapsed since the planning application was submitted, it is entirely reasonable that relevant evidence was updated.

15. The submitted officer report does indicate that the appeal proposal may have been refused had the appeal not been lodged. However, there are no committee minutes to substantiate that assertion and a formal decision was not taken. Furthermore, the argument that a subsequent appeal would have been lodged had the application been determined is an unsubstantiated presumption on the applicant's part and not a reason to justify their application for an award of costs.
16. Furthermore, it was the applicant's submission that set the scope for this appeal to one that clearly extended beyond the appellant's appreciation. The appellant was entitled to respond to that scope through the planning appeal process.
17. Moreover, the necessary resources expended by the applicant through the course of this appeal are unlikely to have been any greater than those that would have been required had the appellant been given the opportunity to address the applicant's further concerns during the at determination period. Indeed, budgetary decisions to outsource certain professional advice is a matter for the Council. For these reasons the Council's claims of being burdened with additional costs in their assessment of further submissions is not justified.

Conclusion

18. For the reasons given above, I do not find that unreasonable behaviour from Drum Developments (North West) Limited on substantive grounds, as described in the Planning Practice Guidance (PPG) is evident. Consequently, neither has any unnecessary expense in terms of the preparation and submission of the defence of the relevant appeal occurred.
19. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

INSPECTOR