
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 Drum Developments (North West) Limited for a full award of costs against Rochdale Metropolitan Borough Council.
 - 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.
-

Decision

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

The submission by Drum Developments (North West) Limited

2. The applicant has submitted that the Council acted unreasonably on both procedural and substantive grounds.
3. The applicant has asserted that there has been a lack of co-operation, delays in providing information and failures to adhere to agreed deadlines. The applicant has advanced that during a 3 year period from submission of their planning application they had not been approached by the Council to agree an extension of time nor provided with a satisfactory explanation as to the reasons for the delay.
4. The applicant has advised that the Council had not made them aware of the concerns about educational capacity, acoustic fence and design of the mill building until after the appeal was lodged. Furthermore, issues regarding the sequential search methodology had remained unanswered.
5. A chronology of the events and communication with the Council has been submitted to evidence the applicant's allegations. They have advised that cumulatively, this behaviour directly led to the appeal being lodged.
6. The applicant has also advanced that at appeal stage the Council has failed to substantiate its objections to the scheme. They have also alleged that there have been inconsistencies in the methodology of the sequential search applied to other sites.

7. The applicant has claimed that this is unreasonable behaviour that has resulted in unnecessary expense to the applicant in having to make the appeal in terms of preparing the appeal form, supporting documents, the final statement of case and appendices relating to a wider suite of unsubstantiated matters and also in collating evidence of the Council's behaviour. They have stated that further costs have been incurred from reviewing and responding to the Council's case, including the Council's attempt to submit further evidence and also in lodging the application for an award of costs.

The response by Rochdale Metropolitan Borough Council

8. The Council has stated that it is not their intention to address every point raised by the applicant. However, they have maintained that they have not acted unreasonably and that no unnecessary or wasted expense has been demonstrated.
9. It is alleged that the applicant has sought to use the turn-over of case officers to their advantage. The Council has maintained that numerous extensions of time were agreed with the applicant during the determination stage to try to resolve technical and ownership issues. They have stated the fact that this was driven by the applicant is not in itself unreasonable.
10. The Council has stated that it had previously raised concerns about the design of the mill, educational contributions and flood risk. Furthermore, during the course of the application there were a multitude of issues, including those relating to ecology, flood risk and viability that raised serious doubts about the quality of the submission and appropriateness of the proposed development. The Council asserts that the uncertainty regarding the details of the proposed acoustic fence only became apparent at appeal stage and attribute fault to the applicant.
11. The Council's rationale for a different approach to the sequential search regarding other sites has been provided. Furthermore, the Council has advised that the public consultation responses had drawn their attention to decisions whereby Inspectors had adopted a different stance for undertaking a sequential search. That had coincided with the Council being unable to access their own in house legal support and caused the subsequent delay.
12. The Council has stated that whilst it was seeking to resolve the issues about that methodology, it would have been unreasonable for them to expect the applicant to go to the additional expense of providing further information in advance of that matter being resolved. Furthermore, the Council has advised that the revised Sequential Test was not submitted at planning application stage and therefore they had been unable to assess it.
13. The Council has also maintained that all of the reasons for objection were justified in their submissions and have maintained that the expenses cited by the applicant are not as a result of unreasonable behaviour on their part. As the application would not have been approved, it is unlikely that an appeal would have been avoided. They consider that this would have incurred the same levels of expense and does not constitute unnecessary costs for the applicant.

Reasons

14. It is evident from the submissions before me that the planning application subject to this appeal has been the subject of a much protracted period of determination. There have been failings to varying degrees on both sides during the course of the planning application and also the subsequent appeal that have contributed to this. However, the determination process is not linear and much of what the Council has alleged is not extraordinary and should have been capable of swifter action on their part.
15. The evidence before me confirms that there was a significant turn-over of case officers and long term absence of legal support. There is no substantive evidence that would indicate that the applicant sought to use this to their advantage. However, there is clear evidence that the applicant had endeavoured to ensure the necessary information was before the Council to enable it to make its final determination until a decision was taken to lodge the appeal.
16. The more recent stated pressures on the Council's resources to fulfil the obligation to determine the planning application one way or another are regrettable. However, it remains that the Council failed without substantive reason to determine the application within the much extended timeframes which were largely derived through the applicant's own efforts.
17. Moreover, although it was within the gift of the Council to revise its assessment in response to new information, policy or guidance, it is very apparent here that the Council failed to clearly convey the full extent of these more recent concerns with the applicant at the earliest possible stage and without good reason. It should have been for the applicant to decide at what stage, if any they would address any new concerns, rather than for them to be concealed by the Council until the appeal was lodged.
18. The Council has advanced that they would have refused the appeal proposal had the appeal not been lodged. However, a formal decision was not reached and therefore this cannot be regarded as a foregone conclusion and relied upon as justification for the behaviour demonstrated by the Council.
19. I have concurred with the applicant on all matters in contention between main parties, with the exception of flood risk and viability. Flood risk is a fundamental matter in its own right. Although I did not find in favour of the applicant on that point, it was the subject of unreasonable dither and change in stance on the Council's part which ultimately triggered this particular appeal. Nonetheless, I found that both of these matters were of a magnitude that were not capable of being out-weighted. Consequently, the appeal has not led to unnecessary costs in those regards.
20. However, the delayed presentation of further objections by the Council is unreasonable in this instance. This is because they relate to matters that could have been clarified, resolved or managed through an appropriately worded planning condition. At the very least an earlier dialogue could have narrowed the matters in contention and hence the amount of appeal material and resource required.
21. I am mindful that the Planning Practice Guidance (PPG) states that although costs can only be awarded in relation to unnecessary or wasted expense at the

appeal or other proceedings, behaviour and actions at the time of the planning application can be taken into account by the Inspector.

22. Furthermore, the Council's attempt to introduce new evidence to further justify its case in its final comments was inappropriate and resulted in the applicant incurring further delay and costs to address this through the submission of revised evidence.
23. Notwithstanding the outcome of the appeal before me, the submitted chronology of events surrounding the appeal proposal demonstrates that unnecessary consequences for this appeal arose from clear deficiencies in consistency, collaboration, communication and also timeliness on the Council's part.

Conclusion

24. For the reasons given above, I find that unreasonable behaviour from the Council on both procedural and substantive grounds, as described in the Planning Practice Guidance, is evident. This in turn caused unnecessary expense in terms of the preparation and submission of an appeal through an appointed agent which related to a wider scope of matters that I have found were insufficiently substantiated by the Council. Therefore, a partial award of costs relating to appeal costs associated with those particular matters is justified in this instance.

Costs Order

25. 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 Rochdale Metropolitan Borough Council shall pay to Drum Developments (North West) Limited, the costs of the appeal proceedings described in the heading of this decision which relate to all matters with the exception of flood risk and viability; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Rochdale 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.

C Dillon

INSPECTOR