
Costs Decision

Site visit made on 26 January 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2021

Costs application in relation to Appeal Ref: APP/C4235/W/20/3259867 Land rear of 178 to 184 Lowndes Lane, Offerton, Stockport SK2 6DB

- 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 P Duffy for a full award of costs against Stockport Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for Erection of five houses without complying with a condition attached to planning permission Ref DC/073258, dated 30 October 2019.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Applications for costs should clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The applicant considers that the Council behaved unreasonably in a number of ways. In relation to the original application and permission Ref DC/073258, these include i) imposing a condition that fails to meet the tests set out in the National Planning Policy Framework (the Framework); ii) failing to set out in the committee report an assessment of the need for open space or how a contribution would be spent, not mentioning the emerging Open Space Provision and Commuted Payments Supplementary Planning Document (the SPD) or the former Supplementary Planning Guidance, and failing to explain why the condition was imposed contrary to the approach set out in the SPD; and iii) failing to engage with the applicant in relation to the imposition of the condition, contrary to SPD. The applicant also considers that the Council behaved unreasonably by refusing the Section 73 application.
4. The original committee report did not mention the SPD and it did not set out any detailed justification for requiring a contribution. However, it noted that the matter would need to be addressed by condition or obligation. Subsequently, and before the grant of permission, the Council engaged with the applicant in relation to its intention to impose the condition, the level of contribution required and it provided a link to the Council guidance including the SPD. Nevertheless, the condition was not the correct approach, in accordance with

- the SPD, to secure a financial contribution. Moreover, the condition fails to meet the tests set out in the Framework. The PPG is clear that imposing a condition that does not meet the tests does constitute unreasonable behaviour.
5. The relatively late introduction of the need for the contribution resulted from legislative changes during the time that the application was being considered. I understand the applicant's frustration that the application was not determined at an earlier date, but it was not unreasonable of the Council to determine it in the current policy and legislative context. Furthermore, albeit late in the process, the Council did engage with the applicant in relation to the contribution and its intention to impose the condition before the planning permission was granted. Therefore, the applicant was provided with the opportunity to comment on the need for the contribution and the amount.
 6. Nevertheless, having regard to the Framework, the PPG and the Council's own guidance, I find that the Council did act unreasonably in failing to follow its own guidance and by imposing a condition that is not precise or reasonable.
 7. The appeal relates to the Council's refusal of an application for planning permission to carry out development without complying with a condition imposed on the planning permission. Section 73 of the Act sets out the options available to the local planning authority in such circumstances. Planning permission can be granted subject to conditions differing from those subject to which the previous planning permission was granted, it can be granted unconditionally, or it can be refused.
 8. The Council admit that the contribution should have been secured by a planning obligation and the condition was not the correct approach. However, the application subject of the appeal sought only to remove the condition and the applicant was unwilling to enter into an obligation. As can be seen from my decision, I agree with the Council in that the removal of the condition without an alternative means of securing a contribution would conflict with the development plan. Nevertheless, with reference to Section 73, the refusal of the application appears to imply that permission should be granted subject to the same conditions as those subject to which the previous permission was granted. On the basis that it was unreasonable to impose a condition that fails to meet the tests, this appears to constitute unreasonable behaviour.
 9. As the financial contribution that the condition sought to secure is necessary, it was not unreasonable of the Council to request the appellant to enter into a S106. This would have been the appropriate course of action before the planning permission was granted. Moreover, the appellant was the applicant for the original planning application and he was aware, before the permission was granted, of the requirements of the SPD and the level of contribution required to satisfy the condition.
 10. There is little to suggest that he was willing to consider any alternative solution other than the deletion of the condition and hence the contribution to open space. Irrespective, the Council's refusal of the application, leaving the disputed condition in its original form, meant that the appeal could not be avoided. In this regard, the appellant has been put to unnecessary expense in the process.
 11. Consequently, in imposing a condition that fails to meet the tests in the Framework, and contrary to its own SPD guidance, and by refusing to modify

or remove the condition, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

12. In the 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 Stockport Metropolitan Borough Council shall pay to Mr P Duffy, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Stockport 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.

Sarah Manchester BSc MSc PhD MEnvSc

INSPECTOR