



Costs Decision

Site visit made on 8 June 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2021

Costs application in relation to Appeal Ref: APP/B2355/W/21/3270240 MSM Homes, Hollin Way, Rawtenstall, Rossendale BB4 8ED

- 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 MSM Ltd for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for 9 dwellings.
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Decision

1. The award of costs is allowed in part, in the terms set out below.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of 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. The applicant claims that the Council has failed to produce evidence to substantiate each reason for refusal on appeal, has provided vague, generalised or inaccurate assertions about the proposals which are unsupported by any objective analysis, and have not determined similar cases in a consistent manner.
4. In relation to housing densities, the starting point for determination of the application was the Rossendale Borough Council Core Strategy Development Plan Document [2011] (CS) which includes a *minimum* housing density requirement of 30 dph across the borough.
5. In the face of a specified minimum requirement, an approach advocated by the Framework, there is no requirement to consider the overall densities being achieved across the borough or the effect of the development upon them. The individual application stands to be considered against the requirements of the development plan. Furthermore, the Framework is clear in its requirements in relation to effective use of land. In an instance where an existing shortage of land was identified, this placed greater importance on consideration of density. I therefore find that there was no unreasonable behaviour in that respect.

6. In regard to the consistency of decision making, an established material consideration in planning decisions, the Council has had regard to the policies within the emerging Local Plan for Rossendale (2019 to 2034). Paragraph 48 of the Framework advises that policies in emerging plans should be given weight according to their stage of preparation, the extent to which there are unresolved objections, and their degree of consistency to the Framework.
7. The Council have clarified that the relevant policies – particularly in respect of ‘whole-site’ assessment, have been submitted for consideration at examination and are not subject to outstanding objections. Furthermore, as the delivery of public benefits and infrastructure improvements, as sought by the Framework, are substantially dependent on market driven housing schemes, I find the approach sits comfortably with its aims. As the ELP has progressed since the previous decision for the erection of 5 houses (2018/0583) the decision maker is entitled to attribute greater weight as a matter of planning judgement. Accordingly, the circumstances of previous decisions are unlikely to be the same as those under which the Council made its decision for the development in hand. As such, as I have found, it was not unreasonable to arrive at a different conclusion in the particular circumstances of the case.
8. In regard to the effects of an alternative form of development on the site, it is not possible for the Council to offer detailed commentary on schemes that are not before them. However, it recognised that other forms of development have potential to provide higher density development without adverse effects on the character and appearance of the locality. This is an established principle set out in Paragraph 127 of the Framework, which states that proposals should be sympathetic to local character, including the surrounding built environment, ‘whilst not preventing or discouraging appropriate innovation or change (such as increased densities)’. It cannot therefore be unreasonable behaviour to anticipate that an alternative design of development could maintain the area’s character and appearance. As I have found, the matter is not rigidly dependent on the further delivery of identical housing.
9. Housing delivery measured against the estimated need for 4-bedroom dwellings was not a reason for refusal. There was no claim by the Council that the need in that respect had been exceeded, as suggested by the appellant. I find there are no grounds for unreasonable behaviour by the Council in that regard.
10. With respect to developer contributions, for the reasons I have given and as supported by the policies in the ELP, the Council is entitled to consider the proposal in the context of the wider development and adjoining vacant land in the applicant’s ownership. The Framework is clear that market-led housing schemes are the main mechanism for delivering infrastructure and public benefits – including affordable housing. In the absence of justification otherwise, and in the circumstances of the case, it was not unreasonable to conclude that the proposal should meet obligations in terms of affordable housing and open/recreation space.
11. However, in relation to reason for refusal 2, as it relates to open/recreation space needs, I find there was little evidence to demonstrate that the proposal is within an area of identified deficit or where the triggers specified in Policies HS10 and HS11 of the ELP were relevant to the appeal site. In that respect the Council has subsequently failed to substantiate its position.

Costs Order

12. 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 Rossendale Borough Council shall pay to MSM Ltd the costs of the appeal proceedings described in the heading of this decision insofar as they relate to the provision of public open space and the off-site improvement of playing fields.
13. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR