
Costs Decision

Site visit made on 9 November 2021

by K A Taylor MSC URP MRTPI

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

Decision date: 01 February 2022

Costs application in relation to Appeal Ref: APP/A4710/W/21/3269942 Land north of Mill Lane, Mill Lane, Boothtown, Halifax HX3 6TR

- 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 Reflecting Roadstuds Ltd for a full award of costs against Calderdale Metropolitan Borough Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for erection of Business Park for B1b and B1c Uses.
-

Decision

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

The submissions for Roadstuds Ltd

2. This was provided verbally at the Hearing. The applicant seeks a full award of costs, and the following points were raised. The applicant contends that the application was not given full and detailed consideration with a good degree of engagement. They claim the Council's highways officer did not make a fully informed decision in that the transport assessment addendum (TAA) was not duly considered as part of the application. These matters could have been discussed in detail at the time, such that an appeal would not have been necessary.
3. The applicant also contends that the reason for refusal relating to the site being a piecemeal development was unreasonable and the withdrawal of the reason for the refusal at the appeal stage with regard to Saved Policy E4 of the 'Replacement Calderdale Unitary Development Plan, 2009' (RCUDP). Furthermore, the appellant argues that the application could have been amended to demonstrate connectivity in the context of the wider site and the local plan aspirations of the Council.

The response by Calderdale Metropolitan Borough Council

4. This was provided verbally at the Hearing. The Council consider that the application was determined on its merits including the TAA. The drawings which were provided as part of the TAA were not submitted as planning drawings, rather suggestions that the highways officer did not support.
5. The Council contend that the decision was not prejudiced on the local plan allocation, and the position of the emerging local plan means little weight can be given to this. Those discussions with the Head of Planning were without prejudice to any subsequent planning application submission being made.

Taking all these matters into account, the Council considers the application was determined on its merits on the information in front of officer's.

Reasons

6. The Planning Practice Guidance (PPG) advises that costs may 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.
7. The PPG sets out that local planning authorities (LPA) are required to behave reasonably in relation to procedural matters. Examples of unreasonable include lack of co-operation with the other party, and withdrawal of any reason for refusal. The PPG also advises that if a LPA behaves unreasonably with respect to the substance matter, by unreasonably refusing applications, or by unreasonably defending may give rise to costs.
8. Substantive awards, include examples such as, 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, failing to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
9. In respect of the first issue and the TAA, I have had regard to the email exchanges between the Council and the applicant¹. In particular, the Council's senior planning officer, advises prior to determination, all consultee comments had been received. This further advises that the proposed highway improvements as shown on drawing no. SCP/190223/P01 (P01) were not considered to address the objections raised by the highways officer. The correspondences clearly show that discussions had taken place between the applicant's highway consultant and the Council's highways officer, but no alternative solution to address the objection was found.
10. Furthermore, the Council's written evidence in the appeal, includes Appendix CMBC2, extracts from emails from the highways officer. This clearly sets out that discussions had been ongoing since July, and the advice given was that any improvements would need to address both width and visibility constraints, and this would require third party land.
11. The Appendix confirms in the email exchanges of 28 August 2020, of which was prior to the determination of the planning application the following: "*we look at each application on its own merits and having reviewed the 26th August addendum document, the proposed minor changes do not overcome the deficiencies and concerns previously highlighted. There would be negligible benefits compared with the increased traffic associated with the proposal*".
12. Therefore, I am satisfied from the written and oral evidence given at the Hearing that the Council, including the highways officer have given due weight to the TAA. They considered the options put to them including a good degree of engagement. The TAA document had a number of drawings referred to as 'Appendices' and were referenced in the document itself, I have no substantive evidence from the applicant to the Council which suggests that these would supersede drawing P01, or which drawings / schemes would replace it. In

¹ Appellants Statement of Case, Appendix C

addition, it appears to me that the plans in the TAA were outside of the red line of the appeal site.

13. I consider that there has likely been some misunderstanding and confusion, due to discussions taking place at different times between both the highways consultant and the highways officer without the applicant's agent at times. The Council considered the alternatives put forward in the TAA to not be suitable mitigation, they acted accordingly and were not unreasonable in determining the application on the basis of the submitted plan 'P01'. Given the level of disagreement on highway safety, visibility, mitigation, junction improvements, intensification of road use between the parties, I see no other reason that an appeal was unnecessary for these issues.
14. Moreover, as can be seen from my appeal decision, I have found significant harm and conflict with the development in regard to the safe and efficient operation of the highway network in the vicinity of the site, and I dismissed the appeal accordingly.
15. However, turning to the second matter and reason for refusal relating to Saved Policy E4. The Council's formal decision, states that the proposal is not considered to be acceptable. The recommendation to refuse planning permission was made because the development is not in accordance with Policy E4 of the RCUDP. The reason why it would not be in accordance is not set out on the decision. The delegated report is somewhat limited with regard to the principle of development. It refers to no connectivity to the wider site and that the applicant has not demonstrated that a mixed-use development could not be achieved. The Council contended it would prejudice the comprehensive redevelopment of the site.
16. Nonetheless, I see no reason why the matter of connectivity could not have been addressed during the application stage, given that there are alternative routes of access and that an amended site plan could have achieved this. Particularly, as the outline application only sought approval for access. It is also evident the matter of justification was provided, and also in respect of piecemeal development.
17. The Council's statement of case at paragraph 3.2 sets out they did not intend to contest Policy E4 as a reason for refusal at the appeal. Due to the Local Plan examination reaching an advanced stage, and that it is expected the mixed-use allocation will be superseded. From the evidence before me, it appears the applicant was not aware of this part of the reason for refusal being withdrawn, until the appeal commenced, and the LPA's statement was subsequently provided.
18. In line with paragraph 47 of the National Planning Policy Framework, planning law requires planning applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 48 advises that Local planning authorities may give weight to relevant policies in the emerging plan (the more advanced its preparation, the greater weight that may be given); and the extent to which there are unresolved objections to relevant policies.
19. At the Hearing, the Council clarified the position of the emerging Calderdale local plan, which was still under examination. A site allocation has been put forward which includes the appeal site to be unallocated land, and also an

allocation for the site to form part of a wider housing allocation site(s) within the immediate area. There have been no formal recommendations by the examining Inspector in respect of emerging Policy EE1, which would replace Saved Policy E4, and there were outstanding objections relating to housing. The Council confirmed both at the Hearing, and within their cost rebuttal that limited weight should be given to the emerging local plan.

20. Therefore, I consider that the Council's approach to the defence of Saved Policy E4, unrealistic particularly given the stage of plan preparation at this time, the weight to be given and it is wholly unclear as to when the emerging plan would be adopted, or even the extent of main modifications that may be required. On this basis, I am not satisfied from the evidence to conclude that the focus on the future aspirations in regard to housing, did not play some part in the determination or objective analysis on the principle of the development.
21. Notwithstanding, that I have found that the principle of development to be acceptable as set out in the appeal decision, on the basis of the evidence before me. The Council acted unreasonably in refusing the application, withdrawing that reason for refusal, and failed to produce evidence to substantiate the reason for refusal on appeal in regard to Saved Policy E4, resulting in unreasonable behaviour. This led to the applicant having to address these matters, provide submissions in relation to the policy and principle of development leading to unnecessary and wasted expense in the appeal process.

Conclusion

22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial², not a full, award of costs is justified.

Costs Order

23. 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 Calderdale Metropolitan Borough Council shall pay to Reflecting Roadstuds Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the appeal process to those parts of the reason for refusal in respect only of Saved Policy E4 of the RCUDP on the principle of development, such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to Calderdale 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.

KA Taylor

INSPECTOR

² PPG Paragraph: 041 Reference ID: 16-041-20140306: Revision date: 06 03 2014