



Costs Decision

Site visit made on 15 February 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2022

Costs application in relation to Appeal Ref: APP/V4250/W/21/3283041 162 Manchester Road, Astley, Tyldesley M29 7FB

- 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 Stephen White for a full award of costs against Wigan Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the erection of four detached dwellings following demolition of existing buildings.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. The applicant's case for seeking an award of costs is grounded in substantive matters. Specifically, they consider that the Council made inaccurate assertions about the appeal site and the proposals relationship with the adjoining development, and that it also failed to determine cases in a consistent manner.
4. In terms of inconsistent decision making, the applicant indicates that, for the purposes of the appeal proposal the Council determined that the buildings were in agricultural use, which was contrary to an earlier application for prior approval which was refused as the Council determined the buildings were not in agricultural use.
5. I have addressed this matter within the appeal decision. However, for clarity, the Council have made clear within their assessment of the appeal proposal that the prior approval application was determined against the provisions and requirements of Article 3(1) and Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The tests within Class Q of the GPDO are specific in terms of what use the building was last used for and for how long. These are not of relevance to the appeal proposal which was concerned primarily with the lawful use of the building. As such, I do not consider that the Council failed to determine cases in a consistent manner thus there is no unreasonable behaviour in this regard.

6. The planning decision is one which is a matter of judgement. Having regard to the Council's evidence in its delegated report, it is sufficiently clear to me that the assessment of the appeal proposal was clearly supported by objective analysis taking into consideration the circumstances of the site, the development plan and material considerations. It was also based on established case law, particularly regarding the interpretation of the affordable housing trigger and whether the appeal proposal should make appropriate provisions, based on the particulars of the appeal site and its relationship with the adjacent development.
7. I acknowledge that the Council determined that the appeal site and adjacent development were under the same ownership. As can be seen in my appeal decision, this appears to have been a result of the information available to it at the time of its decision, namely the Option Agreement appearing on the register of title. There is nothing before me to indicate that the applicant provided the Council with up-to-date information. Nevertheless, even if the Council failed to recognise the expiry dates of the legal interests on the register of title, it goes on to consider other factors to assist in the determination of whether the affordable housing trigger would be reached. As I have found, the matter of site ownership is not a sole determining factor. I therefore find that the Council substantiated its case and thus did not act unreasonably in coming to its decision in this respect.
8. However, setting aside this matter, even if the Council determined that the appeal site was not in agricultural use, thus constituting previously developed land, the relevant Green Belt exception within the National Planning Policy Framework requires a further assessment of the proposals effect on the openness of the Green Belt. In this regard the Council also found harm. It is therefore clear that there were fundamental disagreements between the parties relating to the merits of the proposal thus the appeal process was unavoidable.
9. The applicant also asserts that the Council failed to cooperate with them. This claim appears to relate to the period during the determination of the planning application and leading up to the appeal. The PPG states that costs cannot be claimed for this period, although actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded. I have found above that the Council substantiated its case. I also note that it previously communicated its concerns regarding contributions in an earlier application at the appeal site. Given this, and the lack of any conclusive evidence indicating a refusal to engage with the applicant, I am not persuaded that the Council's behaviour would give rise to a procedural award of costs.
10. Taking all the above into consideration, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. A claim for costs is not therefore justified and accordingly it is refused.

H Ellison
INSPECTOR