



Costs Decision

Site visit made on 22 March 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 April 2022

Costs application in relation to Appeal Ref: APP/E2340/W/21/3283249 Land to the south of Wood Clough Platts, Brierfield

- 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 Cross Construction Ltd. for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of an application for reserved matters for the erection of 48 dwellings (Appearance, Landscaping, Layout and Scale) of Outline Permission 17/0611/OUT.
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Decision

1. The application for a partial award of costs is allowed 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. In this case the Council's officer had recommended the application for approval. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate why a proposal is unacceptable on planning grounds and provide clear evidence to substantiate that reasoning.
4. The applicant contends that the reason for refusal was vague and generalised; that it has not been objectively analysed or substantiated; and, that the Council's approach to decision making was in conflict with the terms of the outline planning permission.
5. Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that local planning authorities provide clear reasons for their decision. It states that 'where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision'.
6. Although the decision notice (the DN) is clear in its reference to a single policy within the adopted development plan and the National Planning Policy Framework (the Framework), I find the wording and punctuation is such that it

- is open to interpretation. It is imprecise and therefore unclear in its intended meaning. The stated reason could be construed in a number of ways.
7. This was borne out by the limited scope of the appellant's initial statement which primarily confined comments to the issue of some proposed house types. Although the appellant had sought support for the varied house types by reference to Policy LIV5 and went on to refer to other aspects of the design of development, these matters were framed loosely such that they were generalised rather than in response to specific concerns defined in the reason for refusal.
 8. The Council subsequently introduced broader matters of concern, which it states lay within the scope of the reason for refusal. Whilst some of those aspects of the proposal inevitably cut across design issues, if they were intended to be reasons for refusal, they were not specifically referenced in the DN. Matters such as highway and public open space user safety, cycle connectivity, crime prevention or encouragement of healthy lifestyles for example -all of which fall within the scope of Policy ENV2 and were raised in the Council's appeal statement, were not made clear in the DN.
 9. Notwithstanding the broader interpretation of the reason for refusal by the Council, there is little qualified assessment as to the effect of the house types specifically referred to within it. The submissions fall short of the requirements of the PPG to produce evidence to substantiate (that part of) the reason for refusal on appeal. Notwithstanding my own conclusions, I find they constitute the 'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis'¹ that the Council is required to avoid.
 10. In relation to determining the reserved matters application in conflict with the outline permission, for the reasons given within my Decision Letter, I do not find the Council's reading of the terms of the outline permission to be inconsistent with its approach to the reserved matters. Permission 17/0611/OUT is clear in its terms. It does not reference a plan showing an amended layout of development (plan Dwg 02B) and reserves the details of layout and scale for consideration at a later time. I therefore cannot find that unreasonable behaviour has taken place in that regard.
 11. However, taking all those matters together, I find that the stated reason for refusal lacked the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's decision. This has caused the applicant to narrow its focus on a specific aspect of the design which was poorly addressed by the Council. It subsequently also required the applicant to revisit its initial statement to address the wider aspects of the scheme introduced by the Council.
 12. For those reasons, I find the Council has acted unreasonably and contrary to the basic guidance in the Framework and the PPG. The appellant has been faced with unnecessary additional expense in the appeal. A partial award of costs is therefore justified.

¹ Paragraph: 049 Reference ID: 16-049-20140306

Costs Order

13. 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 Pendle Borough Council shall pay to Cross Construction Ltd the costs of the appeal proceedings described in the heading of this decision as they relate to defending the effects of the design and appearance of the development beyond the argument that those matters had been fixed at the outline stage.
14. 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