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## Costs Decision

Site visit made on 4 April 2022

**by Alison Partington BA (Hons) MA MRTPI**

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

**Decision date: 12<sup>th</sup> April 2022**

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### **Costs application in relation to Appeal Ref: APP/T4210/W/21/3287711 218 Holcombe Road, Tottington, BL8 4BQ**

- 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 Nicholas Mordin for a partial award of costs against Bury Metropolitan Borough Council.
  - The appeal was against the refusal of planning permission for a single dwelling following demolition of garages and stables.
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### **Decision**

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

### **Reasons**

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The partial award of costs relates to the second and third reason for refusal which relate to the effect of the proposal on the natural environment and on the setting of the Listed Building and the non-designated heritage assets on the site.
4. The application is made on substantive grounds. It is argued that in refusing the application the Council has made vague, generalised assertions about the proposal's impact, which are unsupported by objective analysis. In addition, it is claimed that, in relation to the second reason for refusal, the Council have refused planning permission on a ground capable of being dealt with by condition. The PPG indicates that, in such circumstances, costs may be awarded against an authority.

### *Natural environment*

5. The second reason for refusal relates to the impact of the proposal on the natural environment and sets out the parts of the *National Planning Policy Framework* (the Framework), to which the Council consider the scheme would be contrary. The Council's appeal statement indicates that as no details were provided on mitigation measures for the loss of trees and scrub or any biodiversity enhancement measures it was not possible to assess whether adequate mitigation would be provided.

6. However, the application was accompanied by an "Inspection and Assessment in relation to Bats and Breeding Birds" report. This not only assessed the impact of the proposal on protected species but set out a range of recommended biodiversity enhancement measures. Whilst I accept this does not give full details of the measures, both the Officer's report and the comments of the Council's ecological advisors, which are recorded in the Officer's report, indicate in the light of this evidence and subject to conditions the proposal would be acceptable and in accordance with the Framework.
7. Whilst the Committee of the Council responsible for determining planning applications is not required to accept the recommendations of its Officers, in circumstances where the professional advice of Officers is not followed, it is reasonable to expect the authority to be able to produce relevant evidence on appeal to support the decision.
8. However, no evidence has been provided in the Council's appeal statement as to why it was considered the mitigation and enhancement measures suggested would not be able to provide adequate mitigation and enhancement on the site. Nor does it indicate why, as advised by its technical advisors, conditions would not be able to satisfactorily deal with any outstanding matters of detail.
9. Whilst the PPG does advise that the use of pre-commencement conditions and those requiring the submission of outstanding details should be limited, it qualifies this as other than where they would clearly assist with the efficient and effective delivery of the development, such as would be the case here.
10. I note the Council has declared a climate emergency and that it gives great weight to this but there is no indication on how this is affecting the determination of planning applications in general. More specifically, at appeal no evidence has been provided on why this scheme should incorporate sustainable building measures over and above the requirements of the Building Regulations.
11. Given this, I consider that with regard to this reason for refusal the Council have acted unreasonably in not providing evidence underpinned by objective analysis to support their decision and in refusing a matter that could have been dealt with by a condition. This unreasonable behaviour has resulted directly in the need to contest this reason for refusal at appeal.

#### *Heritage Assets*

12. The application was accompanied by a Heritage Statement that concluded that the appeal proposal would have a beneficial impact on the setting of both the Listed Building and the non-designated heritage assets and the Officer's report noted that the Council's Conservation officer raised no objections to the scheme.
13. As indicated above, whilst the Committee of the Council responsible for determining planning applications is not bound by the technical advice given by its Officers and can give different weight to matters in the planning balance, it is reasonable to expect evidence to support their decision at any appeal.
14. Whilst the Council's appeal statement indicates the siting close to the east of the non-designated heritage asset would not preserve its setting no objective analysis has been provided to support this assertion. Nor is there any substantive evidence on how it is considered the appeal scheme would harm

the listed building and its setting. Moreover, in the appeal statement no account appears to have been taken of the benefits that would arise through the removal of the outbuildings that currently detract from the setting of the heritage assets.

15. In the light of this, I consider that with regard to the third reason for refusal the Council have acted unreasonably in not providing evidence underpinned by objective analysis to support their decision. This unreasonable behaviour has resulted directly in the need to contest this reason for refusal at appeal.

### **Conclusion**

16. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

17. 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 Bury Metropolitan Borough Council shall pay to Mr Nicholas Mordin, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to the second and third reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Bury 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.

*Alison Partington*  
INSPECTOR