



Costs Decision

Site visit made on 19 January 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Costs application in relation to Appeal Ref: APP/B2355/W/21/3282615 7 Law Head Farm, Higher Greens, Blackwood Road, Stacksteads, Bacup OL13 0JS

- 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 and Mrs Garner for a partial award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for menage, agricultural building, glamping pods and associated amenity block.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.
3. The applicants contend that the Council acted unreasonably in refusing the application on the basis of reasons numbered 2, 3, 4 and 5 on the decision notice. PPG paragraph 49¹ makes clear that local planning authorities are at risk of a substantive award of costs if they refuse planning permission on a planning ground capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead, or if they do not determine similar cases in a consistent manner.
4. The applicants state that the Council has not been consistent in its determination of this application with another application (2021/0449) for 5 camping pods which the Council approved with 5 parking spaces. The parking requirement was based on advice from the Highway Authority which stated that the number should be increased to at least 7 as the 2 bedroom pods may be occupied by different households arriving in separate vehicles. It also noted the parking area should not encroach over the adjacent public right of way (PROW).
5. I have not been provided with any plans in relation to application 2021/0449 however, I note that the Highway Authority advised that one space per pod was acceptable based on the size of the units. As both assessments were based

¹ ¹ Reference ID: 16-049-20140306

on the size of the units, it follows that I find the Council has been consistent in its approach.

6. The applicants contend that the requirement for additional parking spaces could have been imposed as a condition. However, the Highway Authority was concerned with the proximity of the parking area to the PROW. On the basis of the originally submitted plans, it was unclear whether there would be sufficient space for 2 additional parking spaces without obstructing the right of way. The Council contacted the applicants 2 weeks before determining the application requesting an extension of time 'to provide an update and negotiate any further changes if required' to which the applicants did not respond. For the above reasons I therefore do not consider that the Council acted unreasonably by including this within the reasons for refusal.
7. Reason 3 relates to a lack of information submitted to demonstrate that the appeal site is suitable for the proposed use taking account of ground conditions and any risks arising from land contamination. Limited information with regard to land contamination was submitted. As will be seen from my appeal decision, given the previous use of the site and the requirements of national policy and guidance, a condition requiring a risk assessment would not be appropriate. The Council's determination of the application 2021/0449 did not alter my position in this respect. As such, I consider that the Council has not acted unreasonably in this regard.
8. I sympathise with the applicants to some extent regarding reason 4 which refers to the position of a water main. The Council has confirmed that its concern was that the development could cause undue harm/disturbance to the water main. However, whilst United Utilities has been consulted on the application, this issue can usually be dealt with through the building regulations in consultation with the relevant utility company.
9. Nonetheless, it is in the applicants' interest to design their proposal so that it did not conflict with any easements present on their land, not least to avoid having to return with revised applications at a later date. Indeed, the applicants, as part of their appeal sought to amend the drawings following a conflict with the required 5m easement, notwithstanding that I was unable to take these into account as outlined in my appeal decision. The Council contacted the applicants prior to making its decision and this is a matter that could have presumably been resolved at that stage, had the applicants responded. I therefore do not find any evidence of unreasonable behaviour in this regard.
10. In terms of seeking arrangements for bin storage and collection, as set out under reason for refusal 5, the Council had concerns with access, highway safety and character and appearance. In view of this, it was not unreasonable to require this information prior to determination. The Council gave the applicants the opportunity to respond on these matters prior to its determination of the planning application. The applicants did not respond and the Council went on to determine the application. The applicants subsequently amended the scheme at the appeal stage. They could have done this prior to the determination of the application. There is nothing before me to suggest that the council behaved unreasonably.
11. Although the Council's approach was different under application 2021/0449, from what I have read, the circumstances were not directly comparable in

terms of access and character and appearance, and it was not unreasonable for the Council to have taken the approach it did.

12. Notwithstanding my above assessment with regard to reasons 2, 4 and 5, I note that even if these could have been addressed by conditions as the applicants contend, this would not have enabled the proposed development to go ahead (having regard to the PPG) nor could an appeal have been avoided, given the Council's other concerns. As such I am satisfied that this is not unreasonable behaviour that has led to unnecessary or wasted expense in this appeal.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a partial award of costs is not justified.

Paul Martinson

INSPECTOR