



Costs Decision

Site visit made on 24 November 2020

by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Costs application in relation to Appeal Ref: APP/C4235/W/20/3257002 41 Werneth Road, Woodley, Stockport, SK6 1HP

- 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 Simon Broster (on behalf of Cube Homes Ltd) for a full award of costs against Stockport Metropolitan Borough Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on details required by a condition of an outline planning permission for the demolition of existing buildings and erection of up to 7 dwellings with associated works.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The Planning Practice Guidance 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably both procedurally and substantively. From a procedural perspective, it is contended that the pre-application and planning application processes failed to operate in an effective or timely manner, and that this failure provides justification which considered individually and cumulatively has resulted in unreasonable behaviour. From a substantive perspective, the applicant contends a failure to engage with the applicant and their representatives led to the submission of the appeal, and the Council's interpretation of the planning regulations has resulted in a substantively unreasonable position.
4. The Council accepts that it did not meet the expectations of providing a written response to the pre-application enquiry within a specified timescale, and it would appear that dialogue between the parties did not meet the expectations of the applicant. However, the Council considers that it remained consistent within the overall planning process with regards the nature of its advice regarding any reserved matters submission.
5. Nevertheless, although I am not entirely persuaded by the suggestion that the applicant would not have accepted the pre-application advice in any event, thus inevitably leading to an appeal, I do accept that from a procedural

standpoint there was a high probability of an appeal being entered into given the respective positions of the parties.

6. Nevertheless, I find the critical determinant in this instance which has led to the need for the appeal, is not the advice of the Council in respect of the assessment of the reserved matters in themselves, as I have agreed broadly with the interpretation as set out in the appeal. However, it is the rigidity and incompleteness of the Council's actual assessment which has failed to appropriately strike and weigh the balance between the submissions made to address "access" and "layout" as reserved matters, as the caselaw relied upon requires as set out at paragraph 11 of the appeal decision.
7. There is a distinct lack of evidence of a judgement or critical analysis being made as to whether or not the differences in the reserved matters scheme departed from the ambit of the outline scheme in any significant respect, with a listing of said differences in the Council's appeal statement and an assertion that the Council has reached a determination, as a matter of fact and degree and based on its own reasonable and objective planning judgement, failing to represent a substantiation of the contended departure. It is this aspect of the appeal that represents unreasonable behaviour on the part of the Council.
8. I therefore find the Council has failed to substantiate the reason for refusal and has instead relied upon generalised assertion. Therefore, having due regard to all the submissions, I conclude that unreasonable behaviour in accordance with the scope of that described by the Planning Practice Guidance, and resulting in unnecessary or wasted expense, has been demonstrated.

Costs Order

9. 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 Stockport Metropolitan Borough Council shall pay to Mr Simon Broster on behalf of Cube Homes Ltd the full costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Stockport Metropolitan 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.

M Seaton

INSPECTOR