
Costs Decision

Site visit made on 10 November 2022

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Costs application in relation to Appeal Ref: APP/ N4205/W/21/3274546 Montcliffe Quarry, Georges Lane, Horwich, Greater Manchester BL5 6RS

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Armstrongs Aggregates Limited for a full award of costs against Bolton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for a lateral extension to the existing quarry in order to facilitate the extraction of a known, locally distinctive building stone resource.
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Decision

1. The application for an award of costs is allowed, in part, the terms set out below.

The Inspector's Reasons

2. The *Planning Practice Guidance* advises that parties in planning appeals normally meet their own expenses. However, it goes on to say that, where a party has behaved in an unreasonable way that has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Such costs may include, for example, the time spent by appellants and their representatives in preparing for an appeal, including the use of consultants to provide detailed technical advice.
3. The Council has said the applicant had not shown how the delays resulting from the appeal had impacted on the company, stating that such delays are an indirect expense in the development management system. The costs regime though concerns unnecessary or wasted expense in the appeal process rather than delays, and such costs can be incurred as a consequence of having to pursue unreasonable reasons for refusal.
4. The applicant has referred to an Ombudsman complaint it has made concerning the conduct of the relevant Planning Committee, and a concern that its Members were not suitably trained to determine a case of this nature. Those matters though are to be considered by others. It also made reference to an additional reason that sought to refuse the application on highways grounds. However, that seems to have been withdrawn before the decision notice was issued, and so did not form part of the Council's case in this appeal and did not affect the appeal process. Therefore, I am not satisfied that either of these points affect the outcome of this application.
5. The *Planning Practice Guidance* goes on to say that the aims of the costs regime include encouraging local planning authorities to exercise their

development management responsibilities properly. Officers and consultants recommended approval of the scheme, or at least did not recommend its refusal. However, Members of the Planning Committee are entitled to come to a different view, if their decision means the Council relies only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and which can be substantiated on appeal.

6. In considering this application, I have been aware that minerals have to be extracted where they are found. I have noted too that the Council has not contended the extraction of the mineral is unacceptable in principle, or that the proposed quarrying would conflict with Policies 1 or 4 in the *Greater Manchester Joint Minerals Plan*.
7. The Council's first reason for refusal was based on the scheme's effect on the character and appearance of the area. During the quarrying phase, it referred to the moderate to major (adverse) significance of effect identified by the applicant in relation to close-ranged views. This though was at the initial development stage, with the harm diminishing over time once the landscaping became established. It is therefore not necessarily a suitable benchmark against which to assess the scheme. In its Statement of Case it added that the most significant visual impact would be from the public right of way and the 'removal of a chunk out of the hillside' would be apparent. Furthermore, it said the restoration scheme would be a new feature, present for generations to come. Whilst these statements may be correct, change itself is not necessarily unacceptable, and no specific harm was identified in relation to these points.
8. Moreover, while the Council considered the working of the site may take longer than 20 years, that is not what is proposed now, and so does not form part of the considerations. It was also said the proposed restoration scheme may not be suitable in 30 years' time, but that too could be revisited through conditions if necessary.
9. However, putting those matters aside, the Council identified what I consider to be reasonable concerns arising from the cumulative impact of quarry faces and their extension to higher ground, as well as the adverse effect of noise to nearby walkers. I acknowledge too that while a period of 20 years may not be lengthy in terms of mineral extraction, it may seem a long time for current residents and walkers to experience the effects of the works.
10. I accept the impact on the character and appearance of an area is, to some extent, a matter of judgement, but that still has to be substantiated by objective analysis. Although I have disagreed with the Council's conclusions, and although I accept that further evidence could have been put forward to support its position, I nonetheless find it has provided sufficient analysis to substantiate its concerns in this regard.
11. Turning to the second reason for refusal, the Council contended there was a conflict with openness. This concern related to the 3m bund, and the quarry being visible against the rounded hills when seen from the south, south-west and west. I accept that these aspects would be visible. However, as stated in my decision, the qualified acceptance in the *National Planning Policy Framework* that mineral extraction was not inappropriate must acknowledge some impacts on the Green Belt. To my mind, given this national guidance, it has not been shown why these aspects of the scheme would result in a conflict

with openness that rendered the scheme inappropriate. In relation to its pursuance of this concern the Council therefore acted unreasonably.

12. Concerning the third reason, extending quarrying will often involve encroaching onto a greenfield site. In this instance there is little firm evidence offered to give an indication of the scale of harm that would result from the loss of any habitats or the existing upland pasture, or the overall situation concerning biodiversity once the restoration was undertaken. The Council's pursuance of this concern was therefore also unreasonable.
13. Although I dismissed the appeal, that was for a reason that came to light after the decision on the planning application subject of this case had been issued and the appeal had been lodged. I also raised a further concern about the 'disjoin' between the scheme before me and the planning conditions imposed in the existing quarry. There is nothing to show that was a concern of the Council's. As a result, these issues do not have a bearing on whether or not the planning application would have been refused, and so do not go to the heart of the reasonableness or otherwise of the Council's actions in making its decision.

Conclusions

14. Accordingly, I conclude it has been shown that the Council has behaved unreasonably in relation to the second and third reasons for refusal, and this has directly caused the applicant to incur unnecessary or wasted expense in the appeal process. As an appeal would still have been necessary to address the first reason for refusal, I conclude a partial award of costs is justified, relating to the second and third reasons for refusal only.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972, 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 Bolton Metropolitan Borough Council shall pay Armstrongs Aggregates Limited the costs of the appeal proceedings described in the heading of this decision insofar as they relate to the second and third reasons for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. Armstrongs Aggregates Limited is now invited to submit to Bolton 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.

JP Sargent

INSPECTOR