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## Costs Decision

Site visit made on 21 February 2023

**by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

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

**Decision date: 3 April 2023**

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### **Costs application in relation to Appeal Ref: APP/B2355/W/22/3297146 Land at Clover Hill, Off Todmorden Road, Bacup**

- 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/Mrs S and W Middleton for a full award of costs against Rossendale Borough Council.
  - The appeal was against the refusal of planning permission for a dwelling.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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.
3. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal. The applicant's cost claim is made on the basis of the reasons for refusal and a failure to determine the application on the basis of the amended plans.
4. The Council's decision notice is specific and relevant to the proposal. The reasons for refusal are clearly articulated and state the policies of the development plan that the proposal is considered to be in conflict with.
5. The first reason for refusal relates to the impact of the proposed development on protected trees and hedgerows. The Council determined the application on 10 March 2022, despite receiving an email from the applicant on 9 March 2022, advising of the commission of a further arboricultural report. The date of a planning decision is the date it is issued to the applicant as shown on the decision notice, in this case, the day after the applicant's email.
6. Although the application would have no doubt been going through a number of internal stages, the Council could have chosen to delay issuing the decision. However, there was no obligation on it to do so. The application had gone beyond the statutory determination period and furthermore, no timescales were given for the completion of the arboricultural report. By their own admission, the applicant chose not to engage with the Council's requests for an extension of time to resolve the outstanding issues of the case.

7. Although there is no requirement for an applicant to agree to an extension of time, in failing to do so despite repeated requests over several weeks, they did not show willing to work positively with the Council. The PPG advises that where an application takes longer than the statutory period to decide and an extended period has not been agreed, the Government's policy is that the decision should be made within 26 weeks at most, in order to comply with the planning guarantee.<sup>1</sup> There are financial implications for the Council in failing to make decisions within this time period. I note that the applicant was aware that the application was coming close to the 26-week period. Thus, refusing the application was a legitimate course of action available to the Council, which they chose to take.
8. Even if the Council had not determined the application at that point and it had waited for the submission of additional arboricultural information, there would have been no guarantee that the impact of the development upon protected trees would have been deemed acceptable and therefore, that the application would have been approved. In reaching my decision I have found that even with the submission of an Arboricultural Implications Assessment and Arboricultural Method Statement as part of the appeal process, the proposed development would present a harmful risk to the long-term health and viability of protected trees adjacent to the appeal site.
9. I also note that there were other outstanding matters raised by the Council that the applicant had not provided a response to at the time of the decision, including but not limited to, the site coverage and a swept path plan for delivery vehicles, that the arboricultural report would not have resolved. Consequently, I find that the Council has not behaved unreasonably and that this led to wasted expense in the appeal process.
10. In respect of the matter of the proposed site coverage, the Council's decision notice clearly sets out the reason for refusal and the officer report explains the reason in more detail. Whilst I have not shared the Council's view in relation to this particular matter within my decision, it does not indicate that the Council were unreasonable in their approach.
11. The applicant is aggrieved that the Council determined the application on the basis of the originally submitted plans, rather than the amended plans submitted several weeks before the decision was made. The amended plans were not presented solely to address the Council's concerns. They included additional elements proposed by the applicant such as the access onto Greensnook Terrace, which the Council considered warranted further consultation including with neighbouring landowners.
12. There was a delay between the Council receiving the information and responding to the applicant on the need for consultation. However, there is no evidence before me that the delay was as a result of conscious behaviour on the part of the Council. Moreover, it occurred against a background of an absence of an extension of time agreement. Even if the amended plans had been accepted and the consultation had been carried out, there is no evidence before me that the Council would have come to a different view and the application would not have been refused. An appeal could therefore have occurred regardless. The Council therefore exercised their duty to determine the application in a reasonable manner.

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<sup>1</sup> Paragraph: 002 Reference ID: 21b-002-20140306.

13. It is clear from the documentation before me that the Council tried to engage with the applicant on a number of occasions, giving them an opportunity to address their concerns, withdraw the application or agree to an extension of time. I therefore find that the Council were co-operative in relation to this case. Rather, there appears to have been a difference of opinion between the parties in respect of the merits of the proposal and the need for a formal extension of time agreement. Furthermore, the applicant exercised their right to appeal rather than resubmit a revised planning application under a 'free go,' which would have been the alternative course of action.
14. Although I understand the applicant's evident frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on all of the evidence before me, it has not been demonstrated that any action or inaction by the Council amounts to unreasonable behaviour as described in the PPG, directly resulting in unnecessary or wasted expense at appeal. Accordingly, an award of costs is not justified.

*M Clowes*

INSPECTOR