



Costs Decision

Site visit made on 4 July 2023

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

an Inspector appointed by the Secretary of State

Decision date: 09 August 2023

Costs application in relation to Appeal Ref: APP/W4223/W/23/3316468 Land at Spring Meadow Lane, Uppermill OL3 6EP

- 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 Mrs Olga Flemington for a full award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of the Council for the erection of one detached dwelling.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
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 claim for a full award of costs is made on the grounds that the Council made inaccurate assertions regarding the distance between the proposed building and a neighbouring dwelling which led to the reason for refusal and in doing so has delayed a development that should be permitted. A lack of co-operation including refusing to enter into pre-application discussions was also cited.
4. The reason for refusal relating to privacy between a first-floor bedroom window of the proposed dwelling and the windows within the front elevation of No 5 Abels Lane, follows from a perceived shortfall in distance from a generally acknowledged separation distance of 21m, rather than an adopted standard. The officer report does not provide any apparent consideration of site-specific factors, relying heavily on the quoted 15m separation distance. Despite undertaking a site visit and assessment of the proposal, there is no evidence before me that the Council considered the applicant's email of 3 August 2022, which sought to demonstrate that the distance between the dwellings would be greater than that professed by the Council.
5. Moreover, the Council has not sought to clarify how it arrived at the 15m separation distance in their appeal statement. As this was a determining factor, I find the Council's position to be vague and unsubstantiated. The Council has failed to assess the information before them which may have prevented the first part of the reason for refusal. On this basis I find that unreasonable

behaviour with regard to the substance of the matter of the appeal has occurred.

6. Setting aside the issue discussed above with regard to the clarification of distances, there was clearly engagement between the parties during the determination of the application, evidenced through the copies of emails provided by the applicant. The Council are entitled to determine the level of service they offer to prospective applicant's, based on the resources available. Whilst pre-application advice may have been beneficial, there is no evidence before me to suggest that had it been received, the planning application would have been determined differently. I do not find unreasonable behaviour in this respect.
7. I accept that the Council also refused the proposal on the grounds of the impact on the privacy afforded to the proposed private garden area, albeit collated into one reason for refusal. An appeal may not therefore have been avoided in its entirety. However, the applicant has incurred costs in defending the first part of the reason for refusal in relation to the effect of the proposal on the living conditions of the occupiers of No 5 and the future occupiers of the proposed dwelling with regard to privacy between windows.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated. A partial award of costs in respect of the first part of the reason for refusal only, is justified in this instance.

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 Oldham Metropolitan Borough Council shall pay to Mrs Olga Flemington, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first part of the Council's reason for refusal. This concerned a loss of privacy from a proposed first – floor window with No 5 Abels Lane and the alleged conflict with Policy 9 of the Oldham Local Development Framework; Development Plan Document – Joint Core Strategy and Development Management Policies (2011).
10. The applicant is now invited to submit to the Oldham 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Clowes

INSPECTOR