



Costs Decision

Site visit made on 18 July 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 August 2023

Costs application in relation to: APP/V4250/W/23/3316218 Rothwells Stud, Sennicar Lane, Wigan WN1 2SN

- 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 Warren Clarke against Wigan Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on a planning application for the demolition of indoor riding arena, stables and store and erection of four detached dwellings.
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Decision

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

Reasons

2. Planning Practice Guidance (the 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 expense in the appeal process. The PPG states that such awards may be either procedural in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
3. The applicant sought pre-application advice. While I do not have information on the details submitted at this stage, the Council raised concerns that the proposal would be inappropriate development in the Green Belt due to having a footprint and scale larger than existing buildings, and stated the design should be altered. The Council recommended specific alterations but ultimately advised that at that stage the scheme was also harmful to the character and appearance of the area.
4. The applicant amended the proposal as a result of this advice prior to submitting the application. Following submission of the application, the Council raised concerns regarding the ridge height, scale and massing, stating that minor changes would likely be sufficient to address these issues. The applicant responded asking for specific design changes needed. I do not have evidence that a response was provided by the Council. However, the Council later raised further concerns on the visual impact of the proposal on the Green Belt and listed specific design changes.
5. Following revisions the Council relayed its finding that the visual impact of four dwellings at the site on the openness of the Green Belt would be inappropriate development and that the amendments made were not sufficient to address its concerns. The applicant was invited to withdraw and revert to pre-application, or to proceed to a decision. The applicant appealed on the grounds of non-determination.
6. While pre-application advice was provided and followed the Council is not bound to determine an application in accordance with such advice. Upon receipt of the

application the Council, exercising its planning judgement, found issues with the proposal. This does not equate to unreasonable behaviour. Furthermore, while the applicant has stated that the Council erred in its assessment of the scale and footprint of scheme at that stage, given the pre-application nature of the resulting advice, this would not have led to unnecessary expense during the appeal process.

7. With regard to the assessment of the planning application, the applicant alleges unreasonable behaviour on the part of the Council due to the fact that amendments to the proposal were suggested, leading to new plans being drawn up, before the applicant was ultimately invited to withdraw or proceed to decision. The applicant states that it was also unreasonable for the Council to have raised the issue of Green Belt openness at a late stage, pointing to a positive site visit and references to recommendations for the application to be approved.
8. However, while references were made to recommendations for approval and minor amendments to the scheme that may result it in being satisfactory, at no point did this constitute a formal decision. It appears on the evidence before me that concerns regarding openness were only raised following receipt of the amended plans and that the Council has since reverted to its pre-application position that a 'barn-style' development would be required rather than minor changes. However, this does not necessarily equate to unreasonable behaviour. On further inspection of the application as a whole and the provided amendments, the Council found during the application period that issues remained with the proposal and invited the applicant to withdraw or proceed to decision on this basis.
9. Notwithstanding that the appeal was made due to non-determination, the would-be reasons for refusal have been clearly articulated in the Council's Statement of Case with reference to relevant policy. While it can be seen from my decision that I did not agree with each of these reasons, these are matters of planning judgement such that the Council has not displayed unreasonable behaviour in taking its positions on these issues. However, while the applicant has alleged the Council has erred in interpreting case law, I have ultimately agreed with the overall conclusion that proposal would be inappropriate development in the Green Belt.
10. Accordingly, while it is regrettable that the applicant incurred the additional expense of revising the scheme as a result of the Council's comments, I do not find that Council's later refusal of the application to be unreasonable behaviour that would have led to wasted expense in the appeal process. In addition to the Council being entitled to conclude that the amended scheme did not satisfy local and national policy requirements, given the Council's findings on the initial application it is also likely that, even without the expense of amended plans being incurred, an appeal would have been the likely outcome.

Costs Order

11. For the reasons given I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated, and an award of costs has not been justified.

C Rafferty

INSPECTOR