



Costs Decision

Site visit made on 14 August 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Costs application in relation to Appeal Ref: APP/W4223/C/23/3318977 Land to the south of Knarr Mill, Oldham Road, Delph OL3 5RQ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr John Hargreaves (Knarr Mill Holdings Ltd) for a full award of costs against Oldham Metropolitan Borough Council.
- The appeal was against an enforcement notice alleging the change of use of the land to open storage space (retrospective) and the continued presence of an asphalt surface on the land in the green belt and the siting of vehicles on the land despite the refusal of planning permission under FUL/349141/22.

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. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature.
3. The PPG provides a non-exhaustive list¹ of examples of unreasonable behaviour which may give rise to a procedural award against a local planning authority. This includes "providing information that is shown to be manifestly inaccurate or untrue". The PPG further explains² that, in relation to enforcement action, local planning authorities are at risk of an award of costs "if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate."
4. In this case, the appellant contends that the Council has behaved unreasonably by issuing an enforcement notice with an accompanying plan which was hopelessly inaccurate and failed to accurately identify the precise boundaries of the land to which the notice relates.
5. As set out in my main decision, upon visiting the site it was readily apparent that the red line on the plan attached to the enforcement notice was incorrect. As part of a diligent investigation, the Council should have taken steps to ensure that it accurately identified and specified the precise boundaries of the land intended to be the subject of the notice.

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 048 Reference ID: 16-048-20140306

6. When the error in relation to the plan was subsequently brought to the Council's attention at the outset of the appeal proceedings, the Council could have sought to submit a corrected plan during the appeal. Alternatively, the Council could have chosen to withdraw the notice and issue another notice using the "second bite" provisions under section 171B(4) of the Town and Country Planning Act 1990 as amended.
7. The Council however chose to do neither, stating that as the notice was issued following the refusal of a retrospective planning application the appellant should be under no doubt as to which area of land the notice relates to.
8. In my judgement, the Council's failure to ensure that the plan attached to the enforcement notice was accurate and specified the precise boundaries of the land to which the notice relates, followed by the subsequent failure to make efforts to rectify what was clearly an erroneous plan, amounts to unreasonable behaviour. Since the reason for quashing the notice related directly to that unreasonable behaviour, this suggests that the costs incurred by the applicant in appealing the notice were, as a consequence, unnecessary or wasted.
9. Taking all of this into account, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Mr John Hargreaves (Knarr Mill Holdings Ltd) the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Jones

INSPECTOR