



Costs Decision

Site visit made on 14 September 2023

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Costs application in relation to Appeal Ref: APP/N4205/W/23/3314031 Land at Rear of Roka Restaurant, 122 Bradshaw Brow, Bolton, BL2 3DD

- 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 Amjad Khan of Avantgarde for a full award of costs against Bolton Metropolitan Borough Council.
The appeal was against the refusal of planning permission for residential development consisting of 17 apartments with associated car parking.
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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. In this case, the applicant asserts that, in failing to take account of the report of its own viability consultant, the Council's decision was perverse and was tainted by a lack of understanding of its own policy.
4. On the basis of the updated viability information submitted in August 2022, the Council's viability consultant agreed with the applicant that the scheme could not support any contributions at all, and the planning officer took this into account when recommending that the scheme be approved without making contributions towards open space, affordable housing and education. The Council was not obliged to follow the advice of officers and consultants, but in coming to a different view needed to provide clear evidence to substantiate its reason for refusal.
5. The Council was keen to ensure that the proposal made an appropriate contribution to infrastructure, in accordance with relevant development plan policies. However, Core Strategy Policy IPC1, which sets out requirements for infrastructure contributions, clearly states that the policy is applicable unless it can be demonstrated by the applicant that the scheme would not be viable if contributions were sought or offered. Whilst I appreciate that the planning committee may have found it difficult to accept that a scheme which could apparently support contributions of around £150,000 in February 2021 could no longer support any contributions, that was the clear finding of the Council's viability consultant, who had reviewed both sets of costs.

6. The Council did not question or challenge the viability information provided or the consultant's conclusions, but did note the lack of any attempt to amend the scheme to make it viable to support the required planning contributions. There is no policy support for such a position, however. In refusing the application, the Council chose not to follow the approach to infrastructure contributions set out in Core Strategy Policy IPC1, and offered no clear explanation as to why a different approach was warranted in this case. No other harms were identified that could not be dealt with through appropriate conditions or a legal agreement, so the application should have been approved.
7. I have no reason to doubt that Committee members have an up-to date understanding of planning policy, but in this case they did not have full regard to relevant policy. In preventing development which should clearly be permitted, having regard to its accordance with the development plan and national policy, I find that the Council acted unreasonably. The result was an unnecessary appeal and the costs associated with it. The application for an award of costs is therefore allowed.

Costs Order

8. 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 Bolton Metropolitan Borough Council shall pay to Mr Amjad Khan of Avantgarde 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.

The applicant 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.

R Morgan

INSPECTOR