



Costs Decision

Site visit made on 18 December 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Costs application in relation to Appeal Ref: APP/W4223/W/23/3319500 Land off Steadway, Greenfield, Oldham, Easting 400224, Northing 404385

- 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 Chasten Holdings Ltd for a partial award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for Residential development and associated works.
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Decision

1. The application for a partial award of costs is allowed in part, as set out in the terms 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. The applicant seeks a partial award of costs in respect of the second and third reason for refusal. The applicant submits that the Council failed to produce evidence to substantiate these reasons for refusal, made vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, and, in respect of the third reason for refusal, refused permission on a ground which was capable of being dealt with by way of conditions. The Council failed to respond to the applicant's costs application.
4. The Council's second reason for refusal alleges highway safety concerns in relation to the conflict that may arise between pedestrians and road users through the failure to provide a safe pedestrian route from Steadway to Plots 3 and 4.
5. The Council's officer report states that no comments were received from the Highways Engineer, however the report then goes on to consider highways and access, in which it is noted that the Highways Officer raised concerns regarding the width of the proposed access road. The officer report states additional concerns with the proposal with regards to visibility and manoeuvrability for large vehicles.
6. I have been provided with copies of the correspondence in which all of these concerns were raised and additional information was sought. The Council's consultee comments during the planning application were somewhat lacking in substance and I note that the concerns regarding highway safety have not been expanded upon during the course of the appeal.

7. It can nevertheless be deduced from the evidence I have seen that the Council's concerns were with regards to pedestrian safety within and adjoining the appeal site. Namely the potential for conflict between pedestrians and other road users due to the layout of the access route and visibility at the junction.
8. These concerns were communicated to the applicant during the planning application. A subsequent highway consultee response was received by the applicant following the determination of the planning application, and they had some continued dialogue with the Council in this respect. This correspondence provided sufficient analysis on highway safety matters of concern to the Council, which enabled the applicant to instruct appropriate consultants for the appeal. This is a normal part of the appeal process and does not amount to wasted expense.
9. Although I do not agree with the Council's stance in terms of highway safety, it is clear that there was a difference of opinion between the main parties with regard to this matter during the application stage, and thus the appeal process was unavoidable in this respect. I therefore consider that the Council did not act unreasonably in respect of the second reason for refusal.
10. The Council's third reason for refusal concerns the effect of the development on the protected trees. The applicant contends that permission should not have been refused on this basis as these matters could have been dealt with by way of conditions. As can be seen from my appeal decision, I agree with the applicant that the concerns regarding the effect of the proposed dry-stone wall and the positioning of the protective fencing could be overcome by conditions.
11. Further, during the course of the planning application, the applicant submitted an amended site plan which reduced the extent of the patio at plot 4 in order to address the Council's concerns regarding its effect on the root protection area (RPA) of nearby trees.
12. Whilst the tree survey was not updated in respect of these matters at the time of the Council's decision, the evidence before the Council clearly demonstrated that the development would either not encroach into the RPA or that, where it did, it could be satisfactorily addressed and controlled by conditions.
13. I therefore find that the Council acted unreasonably as the development proposed should not have been reasonably refused for reasons relating to protected trees in so far as the matters I have raised above. The applicant therefore incurred wasted expense through the unnecessary time and effort expended on pursuing this particular part of the case.
14. It can be seen from my decision that I also share the Council's concerns regarding an offsite tree. However, as the applicant did not provide any substantive evidence to address this issue, I consider that they did not incur any wasted expense in this respect.
15. Nevertheless, for the reasons given above, unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated with regard to reason for refusal No 3 and an award of costs is justified.

Costs Order

16. 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 Chasten Holdings Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to reason for refusal No 3; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to 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.

H Ellison

INSPECTOR