



Costs Decision

Site visit made on 20 August 2024

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

**Costs application in relation to Appeal Ref: APP/P2365/W/24/3343353
Land North of Electricity Substation, Mossy Lea Road, Wrightington,
Lancashire, WN6 9RY**

- 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 United Utilities for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of the Council to grant an application for Permission in Principle for the erection of a maximum of two dwellings.
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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. The applicant submits that the Council's reason for refusal cannot be substantiated. The development accords with the development plan. The site is not open space as defined in the Town and Country Planning Act 1990. This relates to public gardens and public recreation. Policy EN3 of the Local Plan concerns open space and is therefore not material to this application for Permission in Principle (PiP). Notwithstanding, the proposal is compliant with the requirements of part B (v) and (vi) of the policy. Additionally, it is submitted that paragraph 135(b) of the National Planning Policy Framework, referenced in the reason for refusal is not relevant to a PiP. The Council has therefore prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The Council have not responded to the application for costs. I therefore determine the application on its merits.
5. In my decision, I have found that the appeal site does not meet the definition of open space and that Local Plan Policy EN3 is not applicable to the site. In particular the Local Plan Policies Map does not define the site as being subject to this policy, unlike other areas of open space in the parish. Furthermore, I have also agreed with the appellant that paragraph 135b) of the Framework, which relates to design and layout, is not relevant at the principles stage of a PiP. The Council has therefore acted unreasonably in failing to apply relevant policy considerations to the appeal proposal and have prevented a development

which should clearly have been permitted, considering its accordance with the development plan.

6. I conclude that this gave rise to the appeal being made and has resulted in the applicant incurring unnecessary expense in the appeal process.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

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 West Lancashire Borough Council shall pay to United Utilities, 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.
9. The applicant is now invited to submit to West Lancashire 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.

Helen Hockenhull

INSPECTOR