Planning Inspectorate

Costs Decision

Site visit made on 3 December 2024

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Costs application in relation to Appeal Ref: APP/M2372/W/24/3346827
542 Bolton Road, Darwen BB3 2JR

- 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 Umer Zubair for a full award of costs against Blackburn with Darwen Borough Council.
- The appeal was against the refusal of planning permission for change of use from a former public house with ancillary first floor residential accommodation (sui generis) to retail class (e) with first floor ancillary residential use by the applicant.

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 application for costs relies to a substantial extent on whether the Council has acted unreasonably by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis.

4. This application accompanies an appeal that was refused for three reasons. The first two reasons related to the location of the development. The Council considered this to be unsuitable for the proposal as it was not situated in a local centre. Therefore, the application had not demonstrated that no sequentially preferable site was available to accommodate the development.

5. The applicant provided evidence that, during the course of the planning application, the location of the development was raised by the planning officer in their correspondence. It was stated that there are no shopping facilities within 500m of the proposal, and that there are likely to be vacant shops within 500m of the site that could accommodate the development. The applicant responded to this correspondence confirming that the site is next door to a furniture store and there are shops within 100m of the site. This aligns with my observations on site.

6. The Council stated in the correspondence that it must therefore apply policies DM35 and DM36 of the Blackburn with Darwen Local Plan (2024) (LP). However, policy DM34 of the LP is for District and Local Centres and specifically mentions Bolton Road (Whitehall) in Darwen as being in one of the Borough's Local Centres. This is cross referenced in the LP Policies Map for Darwen which shows the presence of a local centre in the location of the appeal site.

7. The Council responded to this and subsequently decided not to defend the first two reasons for refusal. It stated that there has been a period of transition to adjust to the new LP, including issues with its GIS systems displaying the correct policy information. Whilst I sympathise with the Council regarding this error, it did not exercise its statutory duty to implement its development plan policies correctly, concerning reasons for refusal one and two.

8. Turning to the remaining reason for refusal relating to highways. The applicant has stated that the Council has made vague, generalised assertions regarding the attendance of delivery vehicles at the site without evidence. The highways comments whilst recommending refusal do so on lack of parking provision in general and do not refer to deliveries. However, highway matters relating to deliveries form the basis for the reason for refusal, and not a lack of car parking. Whilst no evidence is present in the highway's representation relating to deliveries specifically, the Council in its evidence has stated that it had ongoing discussions with highways officers, I accept that discussions could have informed the planning officer's decision regarding delivery vehicles. Nevertheless, the absence of reference to deliveries in highway comments and a lack of evidence in its own case undermines the robustness of the Council's reason for refusal.

9. Therefore, taking the above matters into consideration, I find that the Council has behaved unreasonably for not having correctly applied the development plan which clearly showed the appeal site within the Bolton Road (Whitehall) Local Centre. Furthermore, the Council has not provided robust evidence for the highways reason for refusal, to demonstrate that deliveries and servicing would have an unacceptable impact on highway safety or have severe residual cumulative impacts on the road network, to warrant refusal of the planning application. If these matters were considered accurately by the Council, the reasons for refusal may have been overcome and the outcome of the planning application may have been different. This has resulted in the wasted time and expense of lodging an appeal for the applicant.

10. For the reasons given above, a full award of costs is warranted.

Costs Order

11. 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 Blackburn with Darwen Borough Council shall pay to Umer Zubair, 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.

12. 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 agreement as to the amount.

N Duff

INSPECTOR