
Costs Decision

Hearing Held on 7 December 2022

Site visit made on 7 December 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th January 2023

Costs application in relation to Appeal Ref: APP/N4205/W/22/3291602 Land off Grizedale Close, Johnson Fold, Bolton BL1 5QX

- 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 Iain Watson (Watson Homes) for a partial award of costs against Bolton Metropolitan Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for demolition of existing bungalows. Construction of new four storey apartment block containing 36 flats and 9 two storey houses, with associated new access road, parking and diversion to existing public footpath.
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Decision

1. The costs application is allowed in part and partial costs are awarded.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application for costs is made on both procedural and substantive grounds. In terms of the procedural grounds, the claim is made on the basis that the appellant was formally advised of the decision of the Council that it would not defend part of reason for refusal 2 and reasons 3 and 4 in their entirety only a day before that on which the appellant was required to submit their appeal statement.
4. The evidence from both parties within the costs submissions is limited in scope. Nonetheless, importantly, the Council do not contend this version of events. Inevitably, the appellant would have wanted to have their case prepared well before they were formally notified of the course the Council would take on 29 April 2022.
5. Even though it is suggested that Officers had set out their intentions to the appellant to withdraw concerns on these matters earlier, this may not have been the final position of the Council, and the claimant acted logically in mounting a defence of the reasons which were yet to be formally withdrawn from consideration.

6. Were the appellant to have been notified sooner and much nearer to the 25 March 2022 date, costs associated with making the case in relation to the 'withdrawn' reasons for refusal may not have been incurred.
7. I accept that issues around these withdrawn reasons for refusal were raised by interested parties and were discussed at the hearing. However, it is an unknown as to whether the appellant would have collated such extensive evidence given that they inevitably did not form main issues within the case following the change of position of the Council.
8. I consider, on the balance of probabilities, they would not have covered the matter in such detail or submitted as much evidence as they did. The Council has therefore behaved unreasonably in procedural terms. Costs are therefore awarded to the appellant with regard to those that were incurred in defending the second half of refusal reason 2 as well as refusal reasons 3 and 4.
9. The second part of the costs claim is made on substantive grounds and relates to the remaining element of refusal reason 2. The claim made is that the Council has failed to substantiate their reason for refusal with evidence.
10. The remaining element of refusal reason 2 related to concerns over loss of trees and hedgerows from the site. Concerns with regard to these matters have not been properly justified. The appeal statement largely consists of tracts of the original Officer report which was written in support of the proposal and is no more specific than stating that the loss of trees would be unacceptable due to the effect on the character and appearance of the area. Evidence within the landscape statement relating to this matter is also limited.
11. The Council offered little additional justification at the Hearing where it was discussed that the site did not currently contain hedgerows. The Council could have been more specific about the trees proposed for removal and how their removal would affect the character and appearance of the area. The evidence of the Council did not demonstrate a sufficient understanding/analysis of the arboricultural implications of the proposal.
12. There has therefore been a failure to produce evidence to substantiate the remaining part of refusal reason 2. The Council has also put forward vague, generalised and in part inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis.
13. The Council has also therefore behaved unreasonably in procedural terms. Costs are therefore awarded to the appellant with regard to those that were incurred in defending the other half of refusal reason two which the Council retained.

Conclusion

14. Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters relating to the process or substantive matters relating to the issues arising from the merits of the appeal.
15. I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A partial award of costs is subsequently justified with regards to costs associated with contesting refusal reasons 2, 3 and 4.

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 Bolton Metropolitan Borough Council shall pay to Mr Iain Watson (Watson Homes) 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.
17. 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.

T J Burnham

INSPECTOR