

APPEAL REFERENCE: PP/T4210/W/22/3302543

SITE ADDRESS: FORMER MONDI MILL/HOLCOMBE MILL, BRIDGE STREET, RAMSBOTTOM BL0 OBS

RESPONSE OF THE LOCAL PLANNING AUTHORITY

TO THE APPELLANT'S APPLICATION FOR COSTS

Background

1. The advice for determining the Appellant's application for costs is in the Planning Practice Guidance. The general principle is that parties in planning appeals must meet their own costs.
2. An award of costs **may** be made if it can be demonstrated that:
 - a party has behaved unreasonably; and
 - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Both limbs of the test must be satisfied and, even then, an award of costs is entirely discretionary.
4. In this case the Appellant is seeking a full award of costs based on the assertion that both of the Council's reasons for refusal are unreasonable. In summary, the Appellant claims that the reasons for refusal on highways and flood risk grounds are contrary to the Officer Report, contrary to the advice of statutory consultees and based on vague and unsupported assertions with no objective analysis.
5. The application was refused for the following reasons:-

Reason 1: *The proposal would be an intensification of the use of a site, which would be detrimental to road safety and maintaining the free flow of traffic. The proposed development therefore conflicts with the following policy(ies) of the Bury Unitary Development Plan: Policy HT4 - New Development Policy H2/2 - The Layout of New Residential Development*

Reason 2: *Notwithstanding the provisions of the development and associated mitigation, the proposed development is located in flood zone 3, which has flooded in 2015 and would lead to increased flooding in the vicinity of the site from surface water and the combined sewer network. The proposed development would conflict with Policy EN5/1 - New Development and Flood Risk of the Bury Unitary Development Plan and Section 14 of the National Planning Policy Framework.*

Reason 1

6. Traffic generation and the impact of the proposal on the transport network in terms of capacity and congestion are clearly material considerations and are underpinned by both local and national policies.

7. The Officer Report sets out that the proposed development of 73 dwellings would lead to additional traffic generation and modelling demonstrated this would particularly impact on the junction of the A56 Manchester Road and Bury New Road. Transport for Greater Manchester (TfGM) is not a statutory consultee but was consulted on the development proposal and recommended the funding of MOVA at the junction to improve its capacity and efficiency. The Officer Report concludes that with the implementation of MOVA the proposal would be acceptable in terms of traffic impacts.
8. However, the Council's Constitution required the decision on the application to be made by the Council's Planning Control Committee (PCC) due to the number of objections received and the fact it was a major application. The PCC is therefore the decision-maker and it was entitled to weigh this material consideration differently, apply local knowledge of the area and reach a different planning judgment. Planning committees can, and often do, make a decision which is different from the officer recommendation. It does not follow, as the Appellant seeks to claim, that a decision against Officer advice, is unreasonable.
9. PCC members are well versed in local issues and are aware that Ramsbottom town centre has established challenges with traffic congestion and a high volume of vehicles (as identified in the objections received to the planning application and the Ramsbottom Town Centre Plan – March 2022). The modelling undertaken shows that the A56 Manchester Road / Bury New Road junction would be exceeded in a "no development" scenario and would be exacerbated by the proposed development. It is clear from the wording of Reason 1 and the PCC debate that members did give consideration to MOVA but were not satisfied that it would adequately mitigate for the additional traffic resulting from 73 dwellings on an existing congested road network and that large residential developments should instead be located towards locations where the existing highway network is able to accommodate the traffic generated.
10. PCC Members had sufficient and reasonable grounds by which to understand that there is doubt in terms of impacts arising from the development when published visionary documentation, resident representations, the officer report, TfGM and the applicant's own transport consultants were all proffering different and conflicting opinions. The underlying concerns that traffic is a problem within Ramsbottom and whether the simplified commuted sum would resolve matters is therefore difficult for any professional to confirm. This will be further expanded upon and substantiated in the Council's Statement of Case.
11. Whilst the Inspector might reach a different view on Reason 1, the PCC has explained why it did not accept the Officer's recommendation on these issues and, where matters turn on a planning judgment, then Councils should not be at risk of costs claims against them.

Reason 2

12. The majority of the application site is located within Flood Zone 3 and there is evidence that the site flooded in 2015 and 2020. Flood risk is therefore a material consideration for this proposal and is underpinned by both local and national policies.
13. The Officer Report sets out that the NPPF requires a sequential approach to ensure that inappropriate development is directed away from the highest risk areas and to ensure that where development is necessary, steps are taken to make it safe without increasing flood risk elsewhere. Whilst the Officer Report concludes that the Exception Test is met because the sustainability benefits to the community outweigh the flood risk, this is a balancing exercise and the PCC as

decision-maker was entitled to weight this matter differently and reach a different planning judgment.

14. Planning Committee members expressed concern that any increase in flood risk, no matter how small was unacceptable when building in an area which has previously experienced significant flooding on numerous occasions historically.
15. Although it is accepted that the modelling of the surface water and river, including climate change does not show any significant increase in flooding, there remained concerns amongst members that there was not sufficient understanding of the increased risk due to the complex interactions with the wider network.
16. On this basis the PCC had reasonable grounds due to these significant complexities to arrive at a different position to the recommendation. The professional officers and consultees retained some doubts given the extensive issues and therefore the Committee felt justified in refusing the application.
17. This will be further expanded upon and substantiated in the Council's Appeal Statement. As this is a planning judgment, it is respectfully suggested that this does not justify an award of costs. Where matters turn on a planning judgment, then Councils should not be at risk of costs claims against them.
18. In summary, Reasons 1 and 2 relate to matters that are clearly material considerations. Reasons 1 and 2 are clearly expressed to enable the Appellant to understand what the concerns are with reference to the applicable policies. The Council's appeal statement will further substantiate and support these. The PCC exercised a planning judgment in determining the application and, whilst the Officer Report and the Inspector may reach a different conclusion on Reasons 1 and 2, it does not follow that the decision is unreasonable.