



Costs Decision

Site visit made on 3 January 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Costs application in relation to Appeal Ref: APP/T4210/W/22/3302543 Former Mondi / Holcombe Mill, Bridge Street, Ramsbottom BL0 0BS

- 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 Eccleston Homes Ltd for a full award of costs against Bury Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the 'Erection of 73 no. dwellings including the retention and conversion of 2 existing buildings to residential use (5 no. units), the retention of a chimney and the demolition of a derelict building, together with engineering operations to create a development platform and associated parking, landscaping, drainage, the layout of internal estate roads and footways and other associated works'.
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Decision

1. The application for a full award of costs is granted in the terms set out below.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG)¹ advises that, irrespective of the outcome of an 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. This can be on procedural or substantive grounds, or both.
3. In this case the Council's officer had recommended the application for approval. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must reasonably defend the appeal by clearly demonstrating why a proposal is unacceptable on planning grounds and provide clear evidence to substantiate that reasoning.
4. The applicant's claim suggests that the Council have relied on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. It is the Council's position that, as part of the democratic process of planning decision making, the Council's Planning Control Committee applied local knowledge and concerns in relation to local flooding and highway conditions. These were issues upon which the Council took the advice of statutory and non-statutory consultees. They were the main issues in the appeal.
6. In relation to highway matters, the Council's concerns related to local highway capacity and road safety. In addition to highway concerns raised by third

¹ Paragraph: 030 Reference ID: 16-030-20140306

- parties, these are issues identified as of local concern in the Ramsbottom Town Centre Plan [2022] (the TCP). Although not part of the development plan, the document provides a useful recent commentary on local perceptions and aspirations in relation to matters including traffic management.
7. The applicant's Traffic Assessment (TA) provided a comprehensive assessment of the likely effects of the development in terms of potential traffic generation and local highway capacity. Alongside proposed layout plans, the TA also demonstrated that parking would be self-contained and non-vehicle road users would be safely provided for within the site.
 8. The TCP identifies pre-existing concerns in relation to town centre traffic congestion and the fact that road vehicle traffic dominates. However, little detail was provided to identify exactly what the Council considered the highway safety issues to be, or where they might arise because of the proposed development. The Council's statement is largely silent on the matter.
 9. In relation to the 'free-flow' of traffic, it is clear that the site, being close to the town centre and on one of few river crossing points linking main busy north-south routes, is in a key location. There is no dispute that the area is subject to congestion at peak times and when the railway crossing is operative. In addition to Bridge Street, some congestion also occurs at key local junctions.
 10. Although there was no dispute that additional traffic would arise, including during peak periods, the TA assessed the effects as limited. Even accounting for the operational limit of the main junction of the A56 and Bury New Road, additional queuing was identified to be at a relatively low level. In advising the Council, Transport for Greater Manchester (TfGM) considered it would exacerbate an existing poor situation at a signal-controlled junction. However, there was little to qualify that any aspect of the proposal would result in a severe network effect.
 11. As a material consideration that post-dates the saved policies in the development plan, the National Planning Policy Framework is clear that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
 12. TfGM provided a monetised valuation of the queueing effects of the development at the A56 junction. However, there is little within their assessment, or the Council's case, to suggest this would be a severe effect. In dismissing the offer of improvements to that junction to offset any adverse impacts, the Council have subsequently offered limited evidence as to any other adverse highway outcomes arising from the development.
 13. Furthermore, the Council's assessment seemed to disregard the fact that the site is allocated for employment uses. Those uses could generate considerable amounts of traffic in a similar manner to the former use of the site, including heavy goods vehicles. Traffic associated with alternative uses would also be subject to the effects of the railway line, as highlighted by third parties.
 14. I acknowledge that as a specialist matter, highway effects could be difficult to assess in the light of the various representations before the Committee. However, given the advice of the Council's highway advisors, if a different conclusion was to be reached, then detailed justification should have been

provided to support those views at appeal. Aside from reference to the general findings of the TCP, there is little specific detail of assessment of the effects of additional traffic or clarification as to what highway safety concerns and where they might present themselves. As described above, this should be clearly articulated for the purposes of defending an appeal. Having regard to the Council's submitted case, I find the detail provided was limited at best.

15. As much of the site lies in Flood Zone 3 and identified as being at high risk from other sources of flooding, the Council's degree of concern in relation to flood risk on the site and elsewhere was not unwarranted.
16. The Council's reason for refusal subsequently referred to a flooding event in 2015. Although I have little doubt that the extreme event gave rise to some flooding in the locality, its extent within the Flood Zone 3 area or the nature of its effects on or about the site were not qualified. It was therefore unclear as to any degree of relevance that that, or other local flooding events, held in relation to surface water or the combined sewer network.
17. The Council identified that the proposed foul input from the development could exacerbate concerns in relation to surface water and the combined sewer into which it was intended to flow. However, aside from the Environment Agency's (EA) flood risk mapping, provided by the applicant, the evidence to demonstrate it is limited.
18. The Council referred to the findings of modelling carried out by United Utilities (UU). Although this was not adamantly contested by the applicant, the Council failed to provide that, or any associated commentary from either UU or the Lead Local Flood Authority, to support its case in relation to either surface water or sewer flooding.
19. I acknowledge that in a location where surface water flooding is a high risk, where drainage is combined and some flows might be influenced by river levels, any assessment of development effects will be complex. However, if there were latent concerns held by the Council's officers, UU or the Lead Local Flood Authority prior to the Council's decision, then these were not made clear in the Council's report. Moreover, they have not been clearly demonstrated in evidence for the purposes of the appeal. Only the EA input expressed a residual concern.
20. Whilst it is for the applicant to demonstrate the extent to which modelled risks would be mitigated, if those risks are considered to be greater than claimed by the applicant, the Council should clearly explain why it has come to that conclusion. The Council's case in this regard appears to conflate proposed capacities in the foul and surface water systems to serve the development.
21. Notwithstanding my own finding in relation to this matter, I find the Council failed to sufficiently evidence and support its own case. Once more, I recognise that, as a decision-making committee, Members might not be expert in the technical application of the various aspects of drainage and rely on experiences of local flooding events. However, if a decision is made contrary to consultee views, then the reasons for coming to that view must be clearly demonstrated. Again, I find the Council's degree of evidence on the matter was limited.
22. I acknowledge the Council's contention that the balancing of the benefits of a scheme against identified harm is a matter for the decision-maker. However,

for the purposes of an appeal, it is incumbent on the Council to clearly articulate the nature and degree of the harm.

23. For the above reasons, I find that the Council failed to substantiate each reason for refusal and relied on generalised assertions about the proposal's impacts which were unsupported by objective analysis. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. For this reason, and having regard to all other matters raised, an award for costs is therefore justified.

Costs Order

24. 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 Bury Metropolitan Borough Council shall pay to Eccleston Homes Ltd the costs of the appeal proceedings described in the heading of this decision.
25. 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.

R Hitchcock

INSPECTOR