The Planning Inspectorate

Costs Decisions

Hearing Held on 9 September 2020

Site visit made on 10 September 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Costs application A in relation to Appeal Ref: APP/P4225/C/19/3235618
663 Oldham Road, Rochdale OL16 4PE

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Zain Mohammed Ali for a partial award of costs against Rochdale Metropolitan Borough Council.
- The hearing was in connection with an appeal against an enforcement notice alleging ongoing engineering operations comprising the formation, laying out and construction of a means of access to a classified road, and the excavation, raising, levelling and re-grading of the front garden area to form an area of hardstanding.

Costs application B in relation to Appeal Ref: APP/P4225/W/19/3235619
663 Oldham Road, Rochdale OL16 4PE

- 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 Zain Mohammed Ali for a partial award of costs against Rochdale Metropolitan Borough Council.
- The appeal was against the refusal of planning permission for development described as creation of a vehicle access, alterations to front and side boundaries and site levels with associated landscaping. Proposed front porch.

Decisions

Costs application A

1. The application for an award of costs is refused.

Costs Application B

2. The application for an award of costs is refused.

Reasons

3. The Planning Practice Guidance 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. The aim of the costs process is to encourage all those involved in the appeal to behave in a reasonable way.

4. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In

addition "unreasonable" is used in its ordinary meaning as established by the courts[1] and not in the stricter law definition of "Wednesbury" unreasonable.

5. Applicants for costs will also need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order for their application to succeed.

6. The appellants contend that with respect to both appeals the Council has acted unreasonably for a number of reasons. I consider each of these, below.

Failure to produce evidence

7. The Council's refusal of the planning application and reasons for issuing the enforcement notice partly relates to highway safety. The Council is concerned that vehicle users would not turn within the site, but rather would reverse onto the highway from the proposed vehicular access point. It is common ground that there is sufficient space to turn within the appeal site to ensure that vehicles enter and egress the appeal site in forward gear. However, it appears that the Council remains concerned with respect to the safety of highways users near to the site with particular reference to potential reversing manoeuvres.

8. The Council's reasons for this concern seem to me to partly relate to their own observations of the site where more than 2 vehicles have been parked. More than two vehicles may result in on-site congestion and difficulty in achieving successful vehicle movements. I do not consider this to be an unreasonable concern given the nature of Oldham Road which is a relatively busy highway with a cycle lane, pedestrian footway and bus route. However, a condition limiting the number of cars parking on the site could mitigate the potential harm arising from this particular concern.

9. The Council has also identified that the development would cause a serious risk of causing accidents, but there is little evidence to support this claim. Indeed, there is insufficient evidence presented by the Council to qualify their concern that vehicles driveways serving residential properties in the area have given rise to accidents. That may be the case, but I consider that the Council has expressed a reasonable and legitimate planning concern. Even a low record of accidents does not mean that there should be no concern with respect to additional access points. However, in this particular case I do not agree with the Council's concern because the appellant has provided sufficient evidence to demonstrate that vehicles can access and egress the site in forward gear and that there are adequate visibility splays to allow users of the access to clearly see the prevailing highway conditions and safely enter and leave the site without hinderance to the safe, convenient and efficient use of the highway by other users.

10. The Council has not provided specific evidence of groups of people congregating at the bus stop which is situated close to the entrance to the appeal site. Again, I consider this to be a real concern, but the evidence produced by the appellant has satisfied me that visibility close to the proposed access would not be sufficiently obstructed by the bus stop and/or bus users so as to result in harm to the safety of highways users.

[1] Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

11. The appellant is also critical of the Council's concerns about the proximity of the bus stop to a high school. This matter was discussed in some detail at the Hearing and I do not consider it unreasonable for the Council to have taken it into account in their evidence, although I do not agree with their conclusion.

12. Consequently, I do not consider the appellant has demonstrated that the Council has behaved unreasonably in terms of the evidence it has provided.

Vague, generalised or inaccurate assertions

13. The appellant contends that the Council's attempts to explain their point of view on the congregation of people are vague and generalised. However, I saw at my site visit that the bus stop in question is very close to the appeal site where there could potentially be some conflict between the users of the proposed development and highway users. In accordance with the development plan the Council has considered this issue in some detail and has come to the conclusion that the conflict may well arise. I am aware of the photographic images shown at the Hearing and have noted the appellant's comments with respect to what he describes as *"behaviour that belongs in a sitcom, not an appeal hearing";* however, whilst I disagree with the Council's conclusions on this matter I do not dispute that the issues relating to the obstruction to visibility are pertinent in this case.

14. As such I do not agree that the Council has used vague, generalised or inaccurate assertions to support their case.

Not adopting a more helpful approach

15. The appellant states that at the site visit the Council agreed that a visibility of 2.4 metres x 43 metres would have been sufficient in this case and this is the first time such dimensions have been identified by the Council. I do not recall this comment nor am I am aware of whether or not it represents the Council's accurate views on the application. The Statement of Common Ground identifies that an amended splay shows the correct dimensions and the required splay length and that is the basis on which I have determined the appeals before me. Indeed, there is insufficient evidence for me to conclude that the splay dimensions identified at the site visit would be acceptable in highways terms.

16. I appreciate that amended visibility splays were drawn up by the appellant in order to rectify a previous error with respect to the measurements of the splays, but there is insufficient evidence for me to conclude that the Council has been unreasonable in its visibility splay requirements. As such I find that the Council has not behaved unreasonably on this matter.

Poor ongoing case management

17. The Statement of Common Ground dated 2 September 2020 was issued more than a year after the planning application was refused (24 June 2019) and the enforcement notice was issued (24 July 2019). Two key issues; relating to turning within the appeal site and visibility splays, were agreed in the Statement of Common ground and are undoubtedly significant in the determination of these appeals. Although I agree that it has taken a long time for the matters to be agreed between the main parties, the appellant has not clearly indicated why this is the case.

18. I understand that additional evidence has been prepared for the appeal, but without further information from the appellant it is not possible for me to identify additional work that has been required as a consequence of the Council's alleged lack of cooperation and better ongoing case management.

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A A Phillips

INSPECTOR