



Costs Decision

Site visit made on 9 November 2011

by Karen Baker DipTP MA DipMP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 November 2011

Costs application in relation to Appeal Ref: APP/T2350/A/11/2156765 Whalley New Road, Billington, Clitheroe, Lancashire BB7 9NW

- 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 Acland Bracewell Limited for a full award of costs against Ribble Valley Borough Council.
 - The appeal was against the refusal of outline planning permission for residential development (39 dwellings).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
3. The planning application the subject of the appeal was refused by Members of the Council's Planning and Development Committee, contrary to the Planning Officer's recommendation. The Planning Officer's report to the Committee clearly identified and assessed the planning policies and issues relating to the proposed development. Paragraph B20 of Part B to Circular 03/2009 says that planning authorities are not bound to accept the recommendations of their officers. However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects.
4. The Council refused outline planning permission on the basis that the proposed development would be detrimental to highway safety due to individual access points on Whalley Old Road and also would lead to an overburden on existing infrastructure provision in terms of drainage, health and education facilities. No objections to the proposed development were received from the highway authority, with regard to highway safety, subject to the imposition of appropriate conditions on any approval and a financial contribution of £65,050 towards the provision of traffic management measures, or United Utilities and the Environment Agency, with regard to drainage provision, subject to the imposition of an appropriate condition on any approval. The Council did not consult the East Lancashire Primary Care Trust, with regard to health provision, and the response from Lancashire County Council indicated that it would have

no objections to the proposal, subject to a financial contribution of £165,759 towards the provision of additional primary school places.

5. Paragraph B16 of Part B of the Circular says that planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations. In its statement, the Council expanded on its reason for refusal in respect of its highway safety concerns. It stated that 13 letters of objection had been received from local residents who had expressed concern about the increased use of the 'already dangerous junction' of Painter Wood with Whalley New Road, the need for some of the occupiers of the terraced houses on Painter Wood to park on the highway due to the lack of garages, the absence of a footpath along Painter Wood, and the use of this highway at rush hour by commuters seeking a quicker route to Blackburn. However, the Council produced no evidence to support its assertions in this regard. Rather, it stated that, notwithstanding the statistical evidence put forward by the appellants, local residents are in the best position to witness the volumes of traffic on a daily basis and the problems caused by the lack of a footpath on Painter Wood, the lack of off street parking for the occupiers of the terraced houses and the hazardous junction of Painter Wood with Whalley New Road.
6. The concerns of local residents and the Council with regard to highway safety are not supported by substantial evidence. Indeed, there is no evidence to show that the junction of Painter Wood with Whalley New Road is 'already dangerous', that on street parking and lack of footpaths along Painter Wood have harmed pedestrian and highway safety, or that the highway is used as a 'rat run' by commuters. Indeed, the evidence put forward by the appellants in the form of the 7 day automatic traffic count, carried out on their behalf by the County Council in August 2010, and the Transport Assessment, submitted with the planning application, do not support the views of local people.
7. The Council also considers in its statement that the proposed accesses onto Whalley Old Road/Painter Wood would be dangerous, given the topography of the site and the steeply sloping driveways, along with the potential for conflict with existing residential driveways on the other side of the highway. However, the Council has not produced any substantial evidence to support its assertions in this regard.
8. With regards to drainage provision, the Council's statement says that, from their consideration of other developments in the locality, Members were aware of deficiencies in the local treatment works and that the decision to refuse the planning application for that reason was based on that knowledge and a fear that the application would further overburden the existing infrastructure and exacerbate the problems. Since the decision was made, United Utilities have confirmed that the appeal site would drain to the Billington Treatment Works, where there is capacity to accommodate the proposed development, rather than the Whalley Treatment Works, where there is no spare capacity. The assumptions made by Members of the Committee were not supported by any evidence presented to them in respect of this proposal and were made despite the lack of any objections from United Utilities and the Environment Agency. Further, the Council's statement appears to now accept that the proposed development would not be detrimental to drainage provision, as no substantial evidence is provided to support its stance. However, it has not withdrawn this element of the reason for refusal.

9. In terms of the impact of the proposed development on health provision, the Council's statement says that Members of the Committee were aware of recent developments in the local area, principally in Whalley, and that based on their local knowledge they were concerned about the pressures that this must put on the local medical centre in Whalley. The assumptions made by Members of the Committee were not supported by any evidence presented to them from the relevant authorities, including the East Lancashire Primary Care Trust, who were not even consulted on the planning application, and the Sabden and Whalley Medical Group. Evidence from the latter, provided since the determination of the application, indicates that the practice had anticipated the growth associated with new housing developments in the area and made provision to accommodate the extra capacity. Further, the Council's statement appears to now accept that the proposed development would not be detrimental to health provision, as no substantial evidence is provided to support its stance. However, it has not withdrawn this element of the reason for refusal.
10. Finally, in terms of the impact of the proposed development on education provision, the Council accepts in its statement that the appellants have offered to pay the financial contribution towards such provision requested by the County Council as education provider. Although the County Council has not stated how this contribution would be spent, without it there would be no guarantee that pupils in this area would be able to secure a school place within a reasonable distance of their homes. The County Council is satisfied that the education contribution provided by the appellants would be sufficient to meet the identified shortfall of primary school places and, as education provider, it has a statutory responsibility to provide sufficient accessible school places for children in its area. The Council has provided no evidence to substantiate its concerns that the proposed development would not be sustainable as it would lead to increased travel by pupils.
11. Paragraph B4 of Part B of the Circular gives examples of unreasonable behaviour which may result in an award of costs to either principal party. These include, resistance to or lack of cooperation with the other party in providing information or discussing the appeal, amongst other things. I note the attempts by the appellants to seek clarification from the Council with regard to the scope of the decision and to explore an appropriate way forward, along with the subsequent submission of, and resolution of the Council to approve, a similar planning application (Ref. 3/2011/0460/P) on the appeal site for residential development (34 dwellings). From the evidence before me, it is apparent that, despite several requests from the appellants, the Council has failed to provide clarification to them regarding the scope/substance of the reason for refusal. This lack of cooperation has resulted in the appellants preparing a case in respect of all aspects contained within the reason for refusal.
12. From the evidence before me, including the recent resolution of the Council to approve a similar development on the appeal site, the Transport Assessment and 7 day automatic traffic count submitted by the appellants, along with the financial contributions towards education and transport provision contained within the Unilateral Undertaking, it is clear that the development on the appeal site should have been permitted. As such, it should not have been necessary for this matter to be determined by a Planning Inspector. In addition, it is apparent that the Council has failed to substantiate its reason for

refusal and has not produced evidence on appeal which provides a respectable basis for its stance.

13. I find, therefore, that the Council has acted unreasonably with regards to Paragraphs B4, B16 and B20 of the Circular and the appellants have incurred expense unnecessarily, as it should not have been necessary for this matter to be determined on appeal. I therefore conclude that a full award of costs is warranted in this case.

Costs Order

14. 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 Ribble Valley Borough Council shall pay to Acland Bracewell Limited, the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to Ribble Valley 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Karen Baker

INSPECTOR