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## Costs Decision

Site visit made on 7 June 2022

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

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### **Costs application in relation to Appeal Ref: APP/W4223/W/21/3288081 298 Moston Lane East, Manchester M40 3HZ**

- 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 Naheem of A2Z Estates for a full award of costs against Oldham Council.
  - The appeal was against the refusal of planning permission for change of use of residential dwelling to residential institution (Class C2) single storey rear extensions and rear first-floor extension.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive.
3. The applicant claims that the Council has acted unreasonably in that it has failed to substantiate its reasons for refusal and has not had regard to national planning policy or its own adopted policies. The Council disputes these claims.
4. Reason for refusal one relates to the effect of the proposed development on the living conditions of residents of 300 Moston Lane East arising from the proposed single storey extension along the boundary with this property. This formed a reason for refusal on the previous proposal<sup>1</sup>. The Inspector for the previous proposal found that scheme to be unacceptable in this regard. I acknowledge that the applicant has sought to address the concerns by reducing the depth of the extension from six to four metres and that the recommendation of Council officers was that this would be acceptable. However, as detailed in the appeal decision, I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision, and these are based on a conflict with the development plan.
5. Reason for refusal two relates to concerns about the effect of the proposed rear extensions along the boundary with 296 Moston Lane East on the character and appearance of the area. The refusal reason explains why the proposed development was considered to be unacceptable and is framed within the

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<sup>1</sup> Appeal reference APP/W4233/W/20/3264993

- context of the development plan. However, the size and design of this rear extension appears to be the same as the previous proposal which the Council did not raise objections to and there seems to be no material changes in circumstances regarding this matter. In these circumstances, the applicant should have had a reasonable expectation that the appeal scheme would have been treated similarly to the previous proposal in this regard.
6. Reason for refusal three refers to a lack of adequate provision of the storage and collection of waste. I note that the planning committee was provided with additional information about the proposed waste management arrangements. The submitted plans indicate the location where waste bins would be located. The Council raised concern in its statement of case that this area would be impractical and inappropriate as it would necessitate the moving of cars, resulting in the bins being stored in a more prominent location.
  7. The PPG advises that local planning authorities are at risk of an award of costs by refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. The Council has not provided any substantive evidence to demonstrate why further details of the bin storage arrangements could not have been dealt with by means of a condition. As I have detailed in the appeal decision, my view is that a suitable condition would address the Council's concerns about the potential effect of waste management arrangements on the character and appearance of the area.
  8. Reason for refusal four relates to the loss of a family home. This matter did not form a reason for refusal for the previous proposal. However, there is no evidence before me about the housing land supply position when the previous proposal was under consideration, whereas the current appeal submissions indicate that the Council cannot demonstrate a five year supply of deliverable housing sites. The relevant development plan policies are supportive of both family housing and community facilities such as that proposed, with Policy 2 of the DPD<sup>2</sup> also requiring development to contribute towards sustainable communities and not undermine community cohesion.
  9. The planning committee is not duty bound to follow the advice of its officers as long as its contrary decision is made on planning grounds and clear evidence is provided to substantiate that reasoning. Reason for refusal four is a matter of judgement. It explains why the proposed development was considered to be unacceptable and is framed within the context of the development plan.
  10. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I find this to be the case with refusal reason four.
  11. Reason for refusal five relates to concerns about noise and disturbance to neighbouring residents due to increased activity and movements associated with the proposed use compared to its use as a dwelling. The substance of this

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<sup>2</sup> Oldham Local Development Framework Development Plan Document – Joint Core Strategy and Development Management Policies, adopted 2011

refusal reason is very similar to refusal reason one for the previous proposal. The Inspector for the previous proposal found that it was acceptable with regard to noise and disturbance. Based on the submitted evidence, with regard to this matter, the appeal scheme does not appear to be materially different to the previous proposal, and, while taking account of the additional information submitted by the applicant, nor does there appear to be any material changes in circumstances.

12. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, an example of which is persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. I find this to be the case with refusal reason five.
13. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should not have reasonably been refused for reasons relating to the effect on character and appearance of the area and living conditions of nearby residents with regard to noise and disturbance, and waste management arrangements. Reasons for refusal two, three and five therefore constitute unreasonable behaviour contrary to the guidance in the PPG and the applicant has been faced with the unnecessary expense of addressing these matters.

#### **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 Oldham Council shall pay to Mr Naheem of A2Z Estates, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's reasons for refusal two, three and five; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Oldham 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.

*F Wilkinson*

INSPECTOR