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## Costs Decision

Site visit made on 15 June 2016

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 01 December 2016**

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**Costs application in relation to Appeal Ref: APP/J1860/W/15/3140465  
Bluebell Farm, Pershore Road, Earls Croome, Worcester WR8 9DJ**

- 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 William Ball for a full or partial award of costs against Malvern Hills District Council.
  - The appeal was against the refusal of planning permission for the conversion of existing stables into office accommodation (B1 use) and an outline application for the construction of up to 6 dwellings with all matters reserved except access.
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### Decision

1. The application for costs is refused.

### Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary costs in the appeal process. Examples of the type of behaviour which may give rise to an award of costs against a local planning authority are set out in paragraphs 47 and 49 of the Guidance.
3. The applicant applied for an award of costs, in relation to three aspects. Firstly, it is considered that the Council has behaved unreasonably in maintaining an objection to the appeal proposal based on the third reason for refusal set out in its Statement, in light of the West Berkshire and Reading Court of Appeal judgement<sup>1</sup>. This confirmed that the Written Ministerial Statement of 28 November 2014 and subsequent alterations to the PPG should once again be considered as national planning policy.
4. A lack of affordable housing provision was not a reason for refusal of the application, but was included as part of the Council's case upon the adoption of the South Worcestershire Development Plan (SWDP) in February 2016. Further to the above, the appeal site is included in land identified as a Designated Rural Area (DRA). This designation came into force on 20 June 2016, and as a consequence, provides for the Council to seek off-site affordable housing contributions sites of 10 units or less. This requirement is in accordance with Policy SWDP15.

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<sup>1</sup> Secretary of State for Communities and Local Government V West Berkshire District Council and Reading Borough Council C12015/2559; [2016] EWCA Civ 441

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5. Whilst I sympathise with the appellant in relation to the changing policy context for affordable housing between the determination of the planning application and the appeal, it was not unreasonable for the Council to pursue the course of action it took in relation to the DRA in order to secure affordable housing in the District for smaller sites, and I found in favour of the Council in concluding that the proposal would not make adequate provision for affordable housing.
6. In relation to the second aspect, the applicant asserts that the Council did not properly assess the brownfield status of the site, and that an update to Councillors at the Planning Committee was unclear. However, it is reasonable of the Council to maintain a position on this matter that is different to that of the applicant, and the resolution of the issue was not material to my decision.
7. Finally, the applicant asserts that the Council sought to introduce a new concern in the Planning Committee update in relation to the possibility of a roundabout to replace the central refuge on Main Road near the junction with the A4104. The Council accepts that the Highway Authority did not formally object to the scheme, and no evidence has been presented on this matter, but this objection was maintained in the Council's statement at paragraphs 6.2.7 and 6.2.8.
8. Nonetheless, the potential for highway works at the junction formed only a minor part of the Council's case, and the applicant referred to it only briefly in their statement.<sup>2</sup> Moreover I gave this factor limited weight in my decision. Although it was unreasonable of the Council to introduce this matter at a late stage in the proceedings without adequate evidence to substantiate the alleged harm, it would not have led to any different decision and the applicant did not provide detailed or extensive evidence to address the point.
9. Taking all of the above into account I conclude that unreasonable behaviour leading to unnecessary or wasted expense in the appeal process on the part of the Council, as set out in the PPG, has not been demonstrated. Consequently, an award of costs is not justified in this instance.

*Claire Victory*

INSPECTOR

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<sup>2</sup> Paragraph 6.2.7 of the Appellant's Response to the Council's Statement of Case