

Costs Decision

Hearing held on 10 November 2016

Site visit made on 10 November 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 09 January 2017

**Costs application in relation to Appeal Ref: APP/J1860/W/15/3138717
Land Adjacent Millennium Green, Holt Heath, Worcestershire (Grid Ref:
380625 Easting 263123 Northing)**

- 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 Malvern Hills District Council for a partial award of costs against Mr Briggs.
 - The hearing was in connection with an appeal against the refusal of planning permission for a development of up to 40 dwellings with all matters reserved with the exception of access.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
 3. The application for costs was made by the Council in relation to an appeal associated with a refusal to grant outline permission for a development of up to 40 dwellings with all matters reserved except access. The applicant believes that the appellant acted unreasonably because of a challenge that was made to the existence of a deliverable 5-year housing land supply (5-year HLS) at a late stage of the appeal process, shortly after the completion of an annual housing land supply assessment. It is alleged that this resulted in unnecessary expense because of a need to undertake supplementary site monitoring and participate in a Hearing. Taken together these perceived failings risk an award of costs on procedural grounds.
 4. I acknowledge that the Council did not receive the appellant's final statement, which challenged the presence of a deliverable 5-year HLS, until the 30 August 2016 after it was duly submitted by the required deadline of the 19 August 2016. I accept that this was not an ideal situation given the original Hearing date was the 14 September 2016. Whilst no further written evidence was accepted after this point, I am satisfied that the applicant was not disadvantaged because the Hearing was rescheduled for a later date which
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provided an ample opportunity to prepare the necessary rebuttal and gather associated evidence. Moreover, this situation was beyond the control of the appellant who acted reasonably in meeting the specified deadline.

5. I acknowledge that the PPG advises that annual housing land assessments should not normally need to be updated for 12 months unless significant new evidence comes to light. However, a number of sites at risk of under delivery were clearly identified in the appellant's evidence and I am satisfied that additional monitoring of these sites was therefore necessary. I understand the applicant's concern regarding whether additional sites may have come forward after the deadline for final submissions. However, this was unlikely given the significant risk of an award of costs against the appellant under such circumstances.
6. Section 319(a) of the Town and Country Planning Act (as amended) gives the Secretary of State the power to determine the most appropriate procedure for an appeal. It is important that appeals are subject to the most appropriate procedure so that evidence can be properly understood and where necessary, tested. I note that the appeal was restarted as a Hearing on the 3 June 2016 because 'a great deal of information has been submitted by the parties following the recent adoption of the SWDP'.
7. This change of procedure was prior to the submission of the appellant's final statement on the 19 August 2016, challenging the deliverability of specific sites, and the publication of the annual housing land assessment in July 2016. Consequently, the appellant's behaviour did not lead to the need for a Hearing as this was already required because of changes to the underlying policy context and the weight of evidence that was subsequently submitted.
8. Given the above, I am satisfied that the appellant acted reasonably in all respects. As such, the appeal could not have been avoided and no unnecessary or wasted expense was consequently incurred. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

Roger Catchpole

INSPECTOR