
Costs Report to the Secretary of State for Communities and Local Government

by Christina Downes BSc DipTP MRTPI

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

Date: 10 April 2017

TOWN AND COUNTRY PLANNING ACT 1990

LOCAL GOVERNMENT ACT 1972

WYCOMBE DISTRICT COUNCIL

Appeal made by

MOLINS PLC

Inquiry held on 31 January 2017, 1-3 February, 7 and 8 February 2017

Site visits held on 31 January and 8 February 2017

Former Molins Sports and Social Club, Mill Lane, Monks Risborough, Buckinghamshire HP27 9LG

File Ref: APP/K0425/W/16/3149747

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**Former Molins Sports and Social Club, Mill Lane, Monks Risborough,
Buckinghamshire HP27 9LG**

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Wycombe District Council for a full award of costs against Molins Plc.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of its decision within the prescribed period on an application for planning permission for the construction of up to 140 dwellings with associated roads, pathways, ancillary refuse/ bicycle storage and car parking areas, amenity spaces, play spaces and landscaping.

Summary of recommendation: that the application be refused.

1. At appeal stage the proposal was amended to a maximum development of 131 dwellings.
2. The costs application for the council was made in writing (*Document INQ 25*). The response by Molins Plc was delivered orally as were the final comments made by the council.

The Submissions for Wycombe District Council

3. The Planning Practice Guidance sets out the types of behaviour that may give rise to a substantive award of costs against an appellant. The appeal proposal was clearly not in accordance with the development plan and there was inadequate supporting evidence to indicate that the decision should have been made otherwise. In this case the right of appeal has not been exercised reasonably.
4. There is no dispute that the appeal site is in the Metropolitan Green Belt (GB) and the Chilterns Area of Outstanding Natural Beauty (AONB). The appeal was recovered by the Secretary of State because it involved significant development in the GB, and the appellant accepted that the quantum of development amounted to major development for the purposes of paragraph 116 of the Framework, although not in terms of its impact. Until rebuttal evidence was produced it was also common ground that the appeal site was in an area at risk of surface water flooding and groundwater emergence (*Documents CD 1.21, paragraphs 5.2.8, 5.2.28; CD 9.5, paragraph 9.5.1*).
5. In this appeal the appellant must demonstrate that there are very special circumstances sufficient to outweigh the harm to the GB and any other harm; that there are exceptional circumstances and a public interest justification for major development in the AONB; that there are considerations that outweigh the “great weight” to be given to the conservation of the AONB’s landscape and scenic beauty in accordance with paragraph 115 of the Framework; and that there is good reason for confining the sequential search relating to flood risk required by paragraph 103 of the Framework to Princes Risborough.
6. In essence the appellant relied on three matters as justification for the development. The first matter was the unmet need for housing. However, it has been national policy for over two and a half years that unmet housing need is unlikely to outweigh the harm to the GB and any other harm to constitute the very special circumstances needed to justify inappropriate development. Nor, assuming the appeal concerns major development in the AONB, is there anything

remotely exceptional about the scale of unmet need in Wycombe or the housing proposed. It is not disputed that there is a housing land supply shortfall of 0.09 years. This would amount to 77 dwellings and the appeal proposal would be for substantially more dwellings than that.

7. The second matter was the lack of harm to the GB and the AONB. However, whatever arguments there might be about the GB purposes served by the site, the construction of up to 131 dwellings on it would undoubtedly severely reduce its openness and would cause harm by reason of inappropriateness to which substantial weight must be given. The development would also profoundly change the character of the appeal site itself and would harm the positive contribution it makes to the natural beauty of the AONB. It would be perceptible from a large number of properties around the site and would be visible from public viewpoints along Crowbrook Road and Mill Lane, from the train station, from public footpaths to the north and east and from Whiteleaf Hill. To suggest that there would be no significant harm is not credible.
8. The third matter related to the other benefits of the scheme. However, most were really measures necessary to overcome objections to the proposal. It is accepted that a 25% reduction in surface water run-off from the site would be of benefit to residents of properties on the south-west corner of the site, but that could hardly justify residential development in an area at elevated risk of flooding. Indeed if it did so it would turn the rationale for the sequential test on its head. In any event it would be a small advantage when set against the weighty policy objections to the scheme.
9. The proposed development would be contrary to GB, AONB and flood risk policy in the Framework and the development plan. However, the objection on GB grounds alone would be sufficient to justify refusal of planning permission. Even if it had been reasonable to put forward an AONB case that would not have been sufficient to reasonably pursue the appeal.
10. The circumstances relied on to justify a departure from policy are not remotely unusual or compelling. The right of appeal has not been exercised reasonably and there has been substantial expense in defending the appeal. The appellant, who has had the benefit of expert representation throughout, would have known of the main objections to the development from an early stage. However, to avoid argument about when it should have been realised that its appeal lacked merit, costs are only sought from the date of the resolution to give putative reasons for refusal on 29 June 2016.

The Response by Molin's Plc

11. The costs application is an attempt to continue the arguments about the merits of the case. These are misplaced as has been explained in the closing submissions, which demonstrate the reasonableness of pursuing the appeal and asking for planning permission to be granted (*Document INQ/24*).
12. In respect of the GB issue, it is common ground that unmet housing need can be a consideration in the planning balance and the Planning Practice Guidance is consistent with that. There are other matters as well that are relied upon, and a notable additional feature is the very low level of harm to the purposes of the GB. There are also the benefits to be added into the equation.

13. In respect of the AONB, it is common ground that the site can accommodate housing development consistent with its AONB designation. The issue is the quantum that would be acceptable, which flows from the assessment of capacity for development. A careful assessment has been made of this development on AONB interests, which is to be preferred to the council's incomplete efforts, questionable methodology and predisposition against development. There was nothing unreasonable about the appellant pursuing the appeal in view of the expert advice it received that the proposal would be acceptable in AONB terms.

Inspector's Conclusions

14. 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.
15. There was no dispute that the appeal proposal would be inappropriate development in the GB. The appellant's contention that openness and GB purposes are incorporated into the matter of inappropriateness was curious and rather difficult to understand. Nevertheless, the appellant accepted that the harm to the GB should be given substantial weight in the planning balance. I have concluded that the adverse effect on openness and GB purposes would increase the degree of harm to a level of very substantial. However, this is a matter of judgement and it is not unreasonable to conclude, as the appellant did, that overall the harm would be substantial.
16. The Planning Practice Guidance advises that unmet housing need is unlikely to outweigh the harm to the GB and other harm to constitute the very special circumstances needed to justify inappropriate development. However, that does not mean that it should not be given any weight and it does not prescribe what that weight should be. That is a matter of judgement depending on the circumstances of the case and the appellant explained its position through its evidence. Furthermore, a number of other factors were advanced to be taken into account in the planning balance. It is acknowledged that some were mitigating factors rather than true benefits but there were others that could be given positive weight in the balance. These included the improvements to flood risk for adjoining occupiers as well as enhancement to biodiversity, connectivity benefits and economic advantages. The appellant also argued that the proposed funding of an off-site recreational facility as compensation for the loss of the private sports ground would be a benefit. This is not an unreasonable position to take even though I have concluded that such compensatory recreational provision would not be justified. The weight to be given to these positive factors, when taken together, is ultimately a matter of judgement. The appellant's judgements were supported by sufficient evidence to conclude that its case was not unmeritorious or doomed to failure on GB grounds.
17. The appellant's position with regard to whether the proposal was major development in the AONB appeared to shift during the appeal process and that was unfortunate. However, its final position was that the appeal proposal would not be major development. Its evidence did though explore the issue of exceptional circumstances and it provided sufficient evidence to support its position that such circumstances would exist in this case.
18. The applicant did not dispute the appellant's proposition that residential development was not unacceptable as a matter of principle in the AONB. The

issue therefore turned on the impact of the appeal proposal on the landscape and scenic beauty of the designated area. The appellant's position in relation to this matter was supported by a landscape and visual impact assessment and detailed evidence from an expert landscape witness. Although the applicant made some criticisms about the methodology that was used, the differences between the two parties ultimately rested on their respective assessments of the severity of impacts. The appellant provided adequate evidence to explain the judgements it had reached, bearing in mind the context of paragraph 115 of the Framework. For all these reasons there was nothing unreasonable in the way that it presented its case on AONB grounds.

19. It was the appellant's final position that a sequential test was not required under paragraph 103 of the Framework. In rebuttal evidence it changed its position with regards to the susceptibility of the site to surface water and groundwater flood risk. This appears to have been as a result of further technical input and it was unfortunate that it happened so late in the proceedings. Nevertheless, the council has not claimed that its change of position was itself unreasonable and did not provide any expert evidence of its own to challenge the expert evidence that was provided. The appellant did undertake a sequential test although the council did not agree with its scope. However, it adequately explained through its rebuttal evidence and at the inquiry why it considered that such a test was unnecessary.
20. For all of the above reasons it is considered that there was sufficient supporting evidence to indicate why the appellant considered that planning permission should be granted in this case. It is therefore concluded that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not justified.

Inspector's Recommendation

21. That the application for costs be refused.

Christina Downes

INSPECTOR