
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 Molins Plc for a partial award of costs against Wycombe District Council.
- 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 by the applicant and the response of the council were delivered orally at the inquiry.

The Submissions for Molins Plc

3. The Planning Practice Guidance sets out the types of behaviour that may give rise to a substantive award of costs against the council. In this case development had been delayed, which should clearly have been permitted; evidence was not provided to substantiate each putative reason for refusal; vague and generalised assertions were made about the proposal's impact and planning permission had been refused on grounds that were capable of being dealt with by planning conditions. The partial award of costs related to the first reason for refusal concerning the sequential test and the fifth reason for refusal concerning design and layout.
4. The ultimate purpose of a sequential test is to address flood risk. It was confirmed by the council at the inquiry that there was no development plan policy requiring a sequential test in the present case. The expert evidence provided by the appellant was that the appeal site was in Flood Zone 1, in the lowest level of risk from groundwater flooding and mainly at very low risk of surface water flooding. The small area of hardstanding at higher risk would be removed as part of the development. In such circumstances it is disputed that national policy requires a sequential test to be carried out.
5. The council should not have pursued the reason for refusal on the sequential test. It had indicated before the inquiry that if detailed drainage proposals indicated an improvement in the surface water and groundwater flooding situation in the local area it would be likely not to pursue its reason for refusal. The reason for refusal was pursued but no expert evidence was provided to support the continued objection. Even if a sequential test had been required, no reasonable authority would have considered that the work that had been done was insufficient. This unreasonable behaviour meant that the expert witness had to prepare a proof of evidence and rebuttal and attend the inquiry. If the reason for refusal had been withdrawn a written note could have been attached to the planning evidence in the same way as the highway matters had been addressed. The ecological proof of evidence had to be prepared because discussions had been continuing on the

issue at the time it was due. The ecology witness attended the inquiry to answer any questions from the Inspector (*Document APP 14, appendix A*).

6. Ecological issues had been at the heart of the fifth putative reason for refusal and were the main reason for reducing the maximum number of dwellings from 140 to 131. Once these had been resolved there could not be a serious suggestion that a successful design could not be achieved. Most of the questions from the council related to detailed design matters. These would be dealt with at reserved matters stage and did not relate to whether the site would have the capacity to accommodate the proposed development. The unreasonable persistence with this objection meant that the expert witness had to prepare a proof of evidence and attend the inquiry.
7. The council behaved unreasonably in respect of reasons for refusal one and five and the appellant had been put to the unnecessary expense of preparing expert evidence and presenting it at the inquiry.

The Response by Wycombe District Council

8. The revised Flood Risk Assessment (FRA) indicates that the site has a low to medium risk of flooding from surface water and groundwater sources and this is further agreed in the statement of common ground (SCG). In such circumstances paragraph 103 of the Framework makes clear that a sequential test is necessary, including in Flood Zone 1 if there are critical drainage problems. The issue is whether the sequential test was adequately carried out. It was indicated at an early stage that Princes Risborough was not the appropriate catchment area. The appellant's own evidence states that it should normally cover the whole district. The proposal was intended to meet the housing needs of the whole district and so this is the appropriate area on which the sequential test should have been carried out (*Documents APP 14, paragraph 3.23; CD 1.21, paragraphs 5.2.8, 5.2.28; CD9.5, paragraph 9.5.1*).
9. There was no need to provide expert flooding evidence because the sequential test has to be undertaken before issues of mitigation through sustainable drainage techniques is considered. Justification for the position regarding the sequential test had been provided in the planning evidence. However, the objection on detailed drainage grounds was withdrawn because the proposed mitigation was satisfactory. The purpose of the sequential test is to direct development to areas with the lowest risk of flooding where mitigation would not be required. It would be contrary to this approach if development were permitted to occupy sites at risk as long as adequate mitigation could be provided.
10. The proof of evidence of the expert witness and his attendance at the inquiry would have been necessary anyway on account of the local objections on flooding and the Inspector's questions. It is noteworthy that an ecology expert provided a proof and attended the inquiry even though ecology matters were not in dispute. The council was acting reasonably in requiring a sequential assessment in accordance with policy requirements. The appellant had not been put to unnecessary expense.
11. The putative reason for refusal five related to the 140 dwelling proposal. As a result of the objections a revised scheme was produced shortly before proofs of evidence were due to be exchanged. The deficiencies in the revised proposal were considered in the council's written and oral evidence to the inquiry. Bearing

in mind that the site is within the AONB it was reasonable to raise and pursue concerns relating to the design of the proposed development.

Inspector's Conclusions

12. 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.
13. In terms of the grounds on which the costs application was made, it is difficult to see how development had been unreasonably delayed because the substantive grounds were only based on two of the five remaining putative reasons for refusal. The applicant mentioned that vague and generalised assertions had been made about the proposal's impact. Although the council did not produce its own landscape and visual impact assessment it did provide an analysis of the applicant's landscape work. The applicant was critical of its methodology but the council explained its approach in its evidence and how it had reached its judgements on impact. There was nothing unreasonable in its behaviour in this respect.
14. In terms of the flooding issue, the updated FRA addressed the issue of a sequential test and concluded that there are no sites with a lower risk in the Princes Risborough area. In the applicant's proof of evidence there was an expressed uncertainty about whether a sequential test would be required and subsequent justification for confining it to Princes Risborough. In the SCG the applicant agreed that the site and its surroundings were in an area of surface and groundwater flooding. The Framework makes clear that even in Flood Zone 1 all types of flooding, including that relating to surface water and groundwater, have to be considered. In these circumstances it is not unreasonable for the council to conclude from the available evidence that a sequential test was necessary and that it had not been undertaken properly. Its requirement that this should cover the whole district was not an unreasonable one, bearing in mind that the proposed housing development was intended to meet a district wide housing deficit.
15. It was only when rebuttal evidence was submitted, shortly before the inquiry, that the appellant provided further information on groundwater and surface water flooding and firmly rejected the necessity to undertake a sequential assessment. Even so, there was no attempt to withdraw from the previously agreed position in the SCG. The applicant's explanation was that the expert witness was not the author of that part of the SCG, he would not have written it like that and any conflict should be resolved in favour of his later expert evidence. That may well be the case but it seems to me that there was sufficient uncertainty in the period leading up to the inquiry that the council was justified in maintaining its position regarding the need for a sequential test.
16. The council did communicate with the applicant that it was unlikely to pursue its two flooding reasons for refusal if it was shown to the satisfaction of the lead local flood authority that there would be a wider improvement to the surface water and groundwater flooding situation. However, that was an officer level opinion and it did not say that a sequential test would be unnecessary. Rather it opined that a balanced approach may be justified in such circumstances and would depend on proper management and maintenance of the sustainable drainage system through a Planning Obligation. It is noted that the latter

document was finally executed on 2 February 2017, when the inquiry was underway.

17. Bearing all these points in mind it is not considered that the council was unreasonable to pursue its reason for refusal regarding a sequential test. In any event I do not believe that the appellant was put to unnecessary expense. Its proof of evidence did not just cover the sequential test and, furthermore, it expressed uncertainty as to whether one was needed or not. The rebuttal evidence dealt with the new information and so would have had to be produced in order to rebut the need for the test. Finally, in light of the way that the matter had unfolded I would have had questions to ask and have no doubt that I would have asked the expert witness to be present at the inquiry to explain the applicant's position on the matter.
18. The revision of the proposed development from a maximum of 140 dwellings to a maximum of 131 dwellings was made at appeal stage. Whilst this primarily resulted from an attempt to address the ecology concerns it also meant that a smaller area was available for built development. It is not unreasonable for the council to consider whether a sufficiently high standard of design and layout could be achieved with the reduced number of dwellings. It is acknowledged that some of its objections were related to detailed design matters and could be addressed at reserved matters stage. However, there was sufficient in its case to justify its position that 131 dwellings could not be satisfactorily accommodated on the site. The council did not behave unreasonably in pursuing this matter and the applicant was not put to unnecessary expense in the provision of expert evidence to support its case.
19. For all of the above reasons the council provided sufficient supporting evidence to substantiate the two putative reasons for refusal in question. It is therefore concluded that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. A partial award of costs is not justified.

Inspector's Recommendation

20. That the application be refused.

Christina Downes

INSPECTOR