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## Costs Decision

Site visit made on 11 July 2017

**by G J Fort BA PGDip LLM MCD MRTPI**

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

**Decision date: 14 August 2017**

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### **Costs application in relation to Appeal Ref: APP/X4725/W/17/3173713 Prince of Wales WMC, Fernhill, Ferrybridge Road, Pontefract WF8 2PG**

- 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 Prince of Wales WMC for a full award of costs against City of Wakefield Metropolitan District Council.
  - The appeal was against the refusal of outline planning permission for residential development with access from Manor Park Avenue.
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### **Decision**

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

### **Reasons**

2. The Government's Planning Practice Guidance (PPG) 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.
3. The applicant brings this full costs claim on substantive grounds: firstly, that the Council refused planning permission on a planning ground capable of being dealt with by conditions, or at a future reserved matters stage; secondly, that the council has failed to produce evidence to substantiate its reasons for refusal at appeal stage; and thirdly, that the Council prevented or delayed development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations.
4. The Council's reason for refusal in this case focussed on the proposed development's surface water drainage arrangements and its effects on flood risk in the appeal site's surroundings. As originally submitted the proposed development concerned an outline application for 14 dwellings, with access for detailed consideration, although the layout was a reserved matter.
5. The planning application was subsequently amended to omit the reference to the number of dwellings proposed. A revised access arrangements drawing only depicting the access point from Manor Park Avenue, and not the road within the appeal site was also submitted at this point. However, considerable work had been carried out at that point on the basis that the access as shown in the indicative layout plans was for detailed consideration, and that 14 dwellings were proposed. Due to the scale of the development as originally proposed the Local Lead Flood Authority (LLFA) was a statutory consultee.

6. Whilst the applicant considers that the Council gave too much weight to superseded plans in its determination of the application, I consider that the revised access plan did not contain detail sufficient for consideration of this matter given the definition of the term set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015<sup>1</sup>. Moreover, the superseded layout plan was included elsewhere in material in support of the application, including the Flood Risk Assessment and Surface Water Drainage Strategy-Addendum<sup>2</sup>. Furthermore, given the intention of the applicant, clearly expressed on the application forms, for access to be considered, the Council did not act unreasonably in assessing the wider highways layout as depicted in other material submitted with the application and referred to in supporting reports.
7. It was established during the determination of the planning application that, due to ground conditions at the site, the proposed surface water drainage measures would not be sufficient to minimize flood risk effects outside of the site. I note that the location of soakaways and other drainage infrastructure would inform future layouts and potentially the quantity of houses delivered. However, I consider that the failure to establish that a residential use of the site would not lead to flood risk elsewhere was a matter material to the consideration of the principle of development, and thus a relevant consideration at the outline stage. Consequently, I consider that the Council was reasonable in basing its reasons for refusal on this aspect of the scheme rather than leaving it to be considered at the reserved matters stage. Moreover, for the reasons given in my decision letter on the appeal, this is a view that I share.
8. Whilst I note that several iterations of the LLFA's holding advice included the wording of a suggested condition, this was not included on the final version of its comments which was issued following e-mail exchanges with the appellant, which failed to demonstrate the feasibility of a surface water drainage solution for the appeal site<sup>3</sup>. Therefore, at the point when the Council determined the application, the LLFA had withdrawn its suggested condition on the basis of the evidence available at that time. I am mindful also of the Council's view that a condition that could frustrate the implementation of the permission, on a matter related to the principle of whether the appeal site could accept residential development would be unlikely to pass the test of reasonableness given in paragraph 206 of the National Planning Policy Framework (the Framework). Consequently, I consider that the Council did not act unreasonably in finding that the drainage matters could not be controlled adequately by a condition.
9. In arriving at this view I am mindful of the appeal and costs decisions<sup>4</sup> referred to me by the applicant. However, in one case there was no in-principle objection to the scheme from statutory consultees in relation to the drainage arrangements; and in the other the Council concurred at a late stage that the

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<sup>1</sup> Given in s2(1): "access", in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where "site" means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made.

<sup>2</sup> Dated 12 May 2016

<sup>3</sup> FERRYBRIDGE RD PONTE-PoW- WM Club-14 Dwellings-APPN no. 15/00869/OUT: NPPF FLOOD RISK AND RUNOFF HOLDING NOTE 7 dated 8 February 2017

<sup>4</sup> APP/D2510/W/16/3153153 and APP/L3245/W/15/3133616

drainage matters could be addressed by a condition. As a consequence, neither of these decisions alters my conclusions with regards to the reasonableness of the Council's decision-taking in this respect, wherein site-specific evidence failed to demonstrate to the Council and a statutory consultee that a drainage scheme was feasible.

10. I note the applicant's view that drainage matters are largely dealt with through other legislation: however, it is clear that the management of flood risk is a relevant material planning consideration and is a key element of the environmental sustainability aspect of the Framework
11. Moving onto the second ground, the Council supplied evidence to substantiate its reasons for refusal, not least the exchange of e-mails between the LLFA and the applicant's agents. These highlighted the shortcomings of the proposed drainage solution, within which the applicant's agent indicated that percolation tests onsite had highlighted that infiltration rates were 'significantly worse' than previous assumptions. As a consequence, it has not been demonstrated that the Council failed to substantiate its reasons for refusal at appeal stage and once more I can find no unreasonable behaviour in this regard.
12. I have found no unreasonable behaviour on the part of the Council in respect of the two grounds discussed above. Moreover, the Council's Officer Report and Decision Notice clearly reference the Framework and development plan policies with which it considered the appeal scheme conflicted; and in my decision letter on the appeal I also find conflicts with these policies. Furthermore, I have been supplied with copies of e-mail exchanges between the parties that show an ongoing dialogue with regards to the scheme, and I consider that these demonstrate a reasonably proactive manner on the part of the Council during the determination of the application. Therefore, on the third ground I consider that it is clear that the Council did not prevent or delay development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations.
13. Therefore, for the reasons given above, and having regard to all other matters raised I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in this case. Accordingly, the application for costs fails.

*G J Fort*

INSPECTOR