



Costs Decision

Hearing Held on 11 October 2017

Site visit made on 11 October 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 7th November 2017

Costs application in relation to Appeal Ref: APP/J1860/W/17/3174725 Land at Winsmore, Powick WR2 4QY

- 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 Fortis Living for a partial award of costs against Malvern Hills District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for "application for residential development on land at Winsmore, Powick for 49 affordable dwellings".
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

The submissions for Fortis Living

2. In advance of the Hearing the applicant indicated their intention to make an application for an award of costs and the application was subsequently provided in writing. In summary, the grounds are: (i) the Council relied upon a reason for refusal that does not stand up to scrutiny and which is not true. In particular, the Council overstated the impact of the development traffic on Winsmore and made a number of assumptions in the absence of objective evidence; (ii) the Council submitted late evidence in respect of transport matters.
3. It is contended that this amounts to unreasonable behaviour, which has caused the applicant unnecessary expense in pursuing the appeal and in responding to the late evidence.

The response by Malvern Hills District Council

4. The response to the costs application was provided in writing during the Hearing. In relation to the highways reason for refusal, the members of planning committee reached a different conclusion to that set out in the officer report. It is argued that many planning judgements are either subjective, or require a balanced view which can legitimately result in members taking a different decision. The Council referred to the ruling in *Barwood Strategic Land LLP v East Staffordshire BC [2017] EWCA Civ 893*, which supports the exercise of planning judgement. It is contended that members exercised planning judgement in the light of all relevant facts and evidence.

5. In relation to the late evidence, the Council states that it did not introduce new reasons for refusal but simply provided clarification of the stated reason for refusal.
6. The Council also argues that it is not clear how the applicant has suffered unnecessary or wasted expense.

Reasons

7. The 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.
8. The Council's first reason for refusal stated that the development would result in a significant number of additional traffic movements on Winsmore, and this would increase potential for conflict, delays and accidents. This assertion is not supported by the evidence that was before the committee, primarily because the data contained in the appellant's Transport Statement shows that traffic movements resulting from the development would be modest. Also, accident records in the vicinity do not indicate an inherent problem with highway safety. I do not agree that this was simply a matter of planning judgement, as the evidence to justify the Council's decision that the development would lead to conflict, delays and accidents is very limited.
9. The first reason for refusal also states that it has not been demonstrated that improvements to the local highway network would effectively mitigate the harm. The mitigation proposed was in response to requests from the Highway Authority, and included funding provision for a waiting restriction on Winsmore, a speed limit within the new estate, dropped kerbs, improvements to bus stops and a cycleway. The mitigation measures were not sought to address the particular concerns of the planning committee, as the Highway Authority did not share these concerns. As the measures are not directly related to the harm stated, they could not reasonably be expected to mitigate that harm.
10. The reason for refusal adds that it is considered that the residual cumulative impacts of the additional vehicular movements would be severe, and detrimental to the safety and proper functioning of the highway network. This assertion is contrary to the advice of professional officers and the findings of the appellant's Highway Statement. Whilst members of planning committee are not bound to follow the advice of the officers, there must be valid reasons to take a contrary view, which must be supported by evidence. The Council has not sought to challenge the evidence of likely trip generation and accident data. Instead it has sought to rely on the perceived impacts of an increase in traffic, and in doing so has disregarded the facts.
11. The submission of the late evidence was clearly an attempt to bolster the case. However, this focussed on more peripheral matters and did not provide sufficient evidence to justify the highways reason for refusal.
12. I find that unreasonable behaviour has been demonstrated as the Council's first reason for refusal contains vague, generalised and inaccurate assertions about the proposal's impact, which are unsupported by objective analysis. This has caused the appellant unnecessary expense in appealing the first reason for refusal and responding to the late evidence.

13. I therefore conclude that a partial award of costs to cover the expense incurred by the applicant in responding to the first reason for refusal and the late submission is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Malvern Hills District Council shall pay to Fortis Living, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the first reason for refusal and the associated late submission; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Malvern Hills District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Debbie Moore

Inspector