The Planning Inspectorate

Costs Decision

Site visit made on 24 January 2018

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2018

Appeal Ref: APP/J1860/W/17/3177254
Land south of Morningside, Tenbury Wells, Worcestershire WR15 8EW

- 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 Stonewater for an award of costs against Malvern Hills District Council.
- The appeal was against the refusal of planning permission for a proposal described as 'Construction of 48 dwellings including access and landscaping'.

Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that, costs may only 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 appeals process.

3. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

4. The appellant's application for an award of costs and the Council's submissions in response were both submitted in writing.

5. The appellant's state that the Council acted unreasonably on the basis that members of the planning committee departed from the professional advice of Officers and refused the application based on unsubstantiated assertions about the impact of the proposal that they consider was unsupported by an objective analysis.

6. Authorities are not bound to accept the recommendations of their officers, but if their professional or technical advice is not followed, then reasonable planning grounds for taking a contrary decision need to be provided supported by relevant evidence. With regard to the Council's first reason for refusal the Council have clearly set out that detailed consideration of the proposal took place during their meeting. The Council's statements provide the necessary justification for their first reason for refusal and demonstrate that in reaching their decision members of committee exercised reasonable planning judgement.

7. With regard to the third reason for refusal I accept that the appellant had demonstrated a willingness to enter into planning obligation under section 106 of the Town and Country Planning Act 1990 and that it is common practice to wait until a resolution to grant planning permission has been received before finalising the terms of an agreement. However, it is the responsibility of the applicant to ensure that their application is supported by the necessary information at the point of submission. Therefore in the absence of a planning obligation I do not consider the Council's actions to have been intentionally difficult or obstructive in citing the lack of an obligation as a reason for refusal. Consequently, whilst I have found in favour of the appellants and allowed their appeal; there is no substantive evidence before me that demonstrates that the Council have acted unreasonably with regard to their third reason for refusal.

8. I have carefully considered the Council's representations in relation to their second reason for refusal. However, the planning committee refused the application contrary to the advice of their professional officers and those of the Highway Authority[1]. The planning committee were provided with clear guidance in relation to any effect of the proposal on highway safety and that any harm could be mitigated by way of suitable conditions. It was on the basis of this professional advice that the applicant had revised and amended their application to meet local car parking requirements. Moreover, the Council have confirmed that the Highway Authority did not object to the proposed parking levels[2]. Therefore, whilst it is accepted the planning committee carried out a site visit prior to reaching their decision, and debated the application at length, there is nothing before me that provides reasonable planning grounds for taking a contrary decision to the technical and professional advice of their officers with regard to the second reason for refusal.

9. Having reached the conclusions above the Council has not adequately substantiated its second reason for refusal and therefore attributed vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

10. 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 Stonewater, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. 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.

Jameson Bridgwater
INSPECTOR

[1] Worcestershire County Council
[2] Malvern Hills DC Appeal Statement Para 6.38