



Costs Decision

Site visit made on 1 October 2019

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 21 November 2019

Costs application in relation to Appeal Ref: APP/J1860/W/19/3233184 Larches Wood at (OS 7015 7431), Clows Top DY14 9NJ

- 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 Woodland Investment Management Ltd for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for the regularisation of access track.
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Preliminary Matter

1. I am aware that the applicant has expressed that unnecessary and wasted expense in the appeal has occurred in relation to an enforcement notice appeal submitted APP/J1860/C/19/3233896. However, this falls outside the scope in respect of this cost application and the appeal which was before me.

Decision

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

Reasons

3. 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.
4. The applicant is of the view that, in members of the planning committee refusing planning permission, the Council have not acted in a reasonable manner. The applicant submits that the application was refused on highway grounds when the planning officer recommended approval and the highway authority had no objections subject to conditions. Furthermore, it is noted that the appellant's highway consultant found there to be no technical basis for the refusal of planning permission on highway grounds.
5. The PPG¹ makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
6. A Council is not duty bound to follow the advice of its professional officers. However, if a contrary decision is reached the Council should clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The minutes of the Northern

¹ Paragraph: 049 Reference ID: 16-049-20140306

Area Planning Committee did not substantiate any meaningful discussion or consideration of the technical facts surrounding the proposal that have taken place by members and instead only offers the voting outcome and their reason for refusal.

7. From the evidence submitted the Council acknowledges that the members of the planning committee applied their local knowledge only, which also took in account the views of the parish council and local residents. Whilst I acknowledge this local knowledge of the area, there is no substantive evidence to support a decision taken contrary advice to that of the statutory consultee, the highway authority in this case. The Council's own planning officer, who fully addressed both local objections and the technical advice that was submitted during the course of the planning application, also recommended planning permission to be granted subject to conditions.
8. The Council now maintain that the speed survey was inaccurate as only a snap shot was taken, and the access provided inadequate visibility onto the public highway. There is no evidence to substantiate these new assumptions. The Council had time during the course of the planning application to raise this concern, which it did not. Moreover, the Council's officer report confirms that a full assessment was carried out with no concerns over achieving adequate visibility, which might be maintained by planning condition governing existing vegetation and future landscaping.
9. It appears to me, having regard to the provisions of the development plan, national planning policy and other material considerations, the development should reasonably have been permitted. It was refused on the basis of local knowledge only, without any technical evidence to counter the assessment made by the applicant's highway consultant and Council's highway officer.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

11. 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 Woodland Investment Management Ltd, the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Malvern 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

KA Taylor

INSPECTOR