
Costs Decision

Site visit made on 27 May 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 25 June 2020

Costs application in relation to Appeal Ref: APP/J1860/W/19/3242404 Land at OS 37845 23772, Castlemorton, Malvern WR13 6BS

- 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 John Heywood for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for development proposal originally described as "change of use to residential".
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Decision

1. The application for an award of costs is refused

Reasons

2. 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. Such examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The applicant contends that the Council acted unreasonably by failing to take into account a number of material considerations and secondly by requiring that advertisement of the appeal site should include other employment generating uses such as tourism, recreation or leisure. As such the applicant is seeking the costs for the time spent preparing the appeal and the costs to advertise the property.
4. In assessing this application for costs it is clear from the Council Officer's report that these issues were fully considered at the time the application was determined. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. It is beholden on the decision maker to determine whether the weight of these material considerations should outweigh any identified conflict with the development plan. In this instance I am satisfied that the Council fully considered the material considerations in their assessment of the proposals, and thus have not acted unreasonably.
5. In respect of the marketing of the appeal site, the applicant contends it is unreasonable for the Council to require the site to be advertised for uses in which it would be unlikely to be granted planning consent for. Policy SWDP12 of the adopted South Worcestershire Development Plan is clear that in the instances where rural employment would be lost, applicants are required to

- demonstrate that the site has been actively marketed for employment, tourism, leisure or recreation purposes for a period of at least 12 months.
6. Policy SWDP12 is an adopted development plan policy which has been through consultation stages and an independent examination prior to its adoption. It contains reasonable and flexible uses which often included within development plan policies in rural areas such as South Worcestershire. Whether or not the applicant disagrees with this policy requirement, it is part of the adopted development plan and I am satisfied that the Council has acted entirely reasonably in assessing the proposal against the policy. As all planning applications are assessed on their individual merits, therefore I cannot agree with the applicant that the uses set out in the policy are unsuitable and would not be able to gain planning permission.
 7. As explained in my appeal decision since the details of the marketing were not submitted as part of the application that led to this appeal. I have no evidence before me to determine if the marketing completed would satisfy the policy requirement. Notwithstanding this, I can see no evidence that the Council specifically required the site to be advertised for the other land uses beyond the policy requirements. Indeed, the wording from the Officers Report mirrors that of policy SWDP12.
 8. Accordingly, I do not find that the Council failed to properly evaluate the application by considering the material considerations such that the appeal would have been avoided. As the requirement for marketing is contained in adopted development plan policy it is therefore clear to anyone seeking an alternative use for a site that evidence of marketing is required. I note that the applicant also had the benefit of pre-application advice from the Council prior to the submission of the planning application. Consequently, the marketing costs are borne by those seeking to pursue an alternative use.
 9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made.

S Shapland

INSPECTOR