
Costs Decision

Site visit made on 19 January 2021

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 February 2021

**Costs application in relation to Appeal Ref: APP/J1860/W/20/3261371
Van Der Hills Nurseries, Land at (OS 7844 3290), B4208 Pendock,
GL19 3PG**

- 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 Mrs K Hill for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for outline application for 4 no. dwellings with access from B4208 all other matters reserved.
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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. Unreasonable behaviour can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account. Failure to determine similar cases in a consistent manner may put a local planning authority at risk of an award of costs.
4. The local planning authority (LPA) refused to grant outline planning permission for application ref 20/00556/OUT (the 2020 scheme), having previously granted approval for an identical proposal ref 15/01346/OUT (the 2016 approval). The principal contention is that, in deviating from the 2016 approval without any material change to the planning policy context, the appeal site or its surroundings, the local planning authority acted unreasonably.
5. The still extant South Worcestershire Development Plan was adopted in February 2016 (SWDP). The 2016 approval decision notice was issued in April 2016 when the SWDP had full statutory force and the LPA were able to demonstrate a 5-year supply of housing land.
6. The LPA's costs rebuttal sets out that the 2016 approval was assessed prior to the SWDP coming into force, at a time when policies for the supply of housing

had not been considered up-to-date and when the 'tilted balance' was engaged. It is explained that formalising a legal agreement meant the decision notice was not issued until April 2016, but that the officer recommendation for the application was made prior to the adoption of the SWDP.

7. Although there might have been some references to SWDP policies within the officer reports, it is also evident that a 'tilted balance' approach was taken and that matters, including in respect of landscape, were not fully assessed against the relevant SWDP policies. Even if seeking to act in good faith in deciding not to re-assess application ref 15/01346/OUT in light of the SWDP, it would appear that in so doing the LPA failed to have had the proper regard it should have to the adopted development plan at the time.
8. I am sympathetic to the fact that the appellant's ill health may have contributed to a delay in submitting a reserved matters application. Whatever the reason, the 2016 approval expired, and new applications seeking outline approval were sought by the appellant. Normally, two decisions made under comparable policy and site circumstances should be made in the same vein. However, it is equally not the case that the mishandling of one application, as appears to have occurred in respect of the 2016 approval, should afterwards inform the mishandling of another.
9. Amongst other things, the PPG sets out that the aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case¹. In respect of the 2020 scheme, the subject of my appeal decision, the local planning authority was able to substantiate each reason for refusal and provide objective analysis to support the assertions made about the proposal's impact, having regard to its accordance with the development plan and national policy.
10. An award of costs might not be made where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan, and no material considerations including national policy indicate that planning permission should have been granted². It will be seen from my decision letter that I agreed with the LPA's assessment of the 2020 scheme and that, having regard to its accordance with the development plan, national policy and other material considerations, I did not find the proposed development should have been permitted.
11. Owing to a distinction between the character and appearance of the appeal site and that considered by another Inspector, as the LPA, I did not consider the Brookend appeal³ justified a departure from the development plan. Moreover, the information put to me in respect of flood risk and drainage indicated that the matters were not capable of being dealt with by conditions.
12. In light of the 2016 approval, I can appreciate that the LPA's subsequent refusal of the 2020 scheme would have provoked frustration. Even if unreasonable behaviour in respect of failing to determine similar cases in a consistent manner is evident, this unreasonable behaviour must have resulted in unnecessary or wasted expense.

¹ Paragraph: 023 Reference ID: 16-028-20140306

² Paragraph: 050 Reference ID: 16-050-20140306

³ APP/J1860/W/15/3135877

13. As the 2016 approval was not advanced, the subsequent outline planning applications were necessary. I do not consider there was any unreasonable behaviour in relation to the LPA's assessment of the 2020 scheme, or in its substantiating of the reasons for refusal. This indicates that the appeal was unavoidable. The power to award costs is limited to those necessarily and reasonably incurred in the appeal process; the expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event.
14. In light of the foregoing, any unreasonable behaviour on the part of the LPA has not resulted in unnecessary or wasted expense incurred in the appeal process that is before me.

Conclusion

15. I appreciate that my appeal decision and this costs decision may protract the appellant's disappointment and frustrations. However, having had regard to the facts and circumstances of the case, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for a full award of costs is therefore refused.

H Porter

INSPECTOR