



Costs Decision

Site visit made on 2 June 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2021

Costs application in relation to Appeal Ref: APP/J1860/W/20/3265980 Land adjacent to Shalom, Bromyard Road, Tenbury Wells WR15 8DJ

- 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 Heather Phelps for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for demolition of existing building - erection of one single storey dwelling.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, 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 appeal process.
3. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for the reasons considered below.
4. Although the applicant may have been advised to withdraw an initial planning application for a 1.5 storey cottage at the appeal site and seek pre-application advice, the decision to do this and forfeit any right of appeal arising from that application was at the applicant's discretion.
5. Based on the Council's pre-application advice and the information before me there is nothing to suggest that the Council had an, in principle, objection to the redevelopment of the appeal site. Furthermore, the pre-application advice was without prejudice to the formal consideration of any planning application following statutory public consultation.
6. Turning to the Council's first reason for refusal, while the Council has subsequently acknowledged that there would be no overlooking of neighbours from the proposed development, this reason also relates to the quality of the proposed amenity space and the effects of the proposed development on the character of the area. The Council's consideration of these issues includes matters of planning judgement. This involves some subjective analysis having regard to the context of the site, the proposal and the development plan and any other material considerations, and this subjective analysis can also vary between planning professionals.

7. Therefore, while I acknowledge that the pre-application advice provided by the Council was site-specific, based on the actual submitted scheme and having undertaken consultations on this, the Council came to a view that the submitted scheme was unacceptable, which included the first reason for refusal. Even though I and have found the appeal in favour of the applicant, I am satisfied that overall, this reason for refusal is complete, specific, and relevant to the application. This reason also refers to the relevant development plan policy. Furthermore, the Council's conclusions about the effects of the proposal in respect of the above matters are largely supported by sufficient analysis.
8. Although the requirement for affordable housing was not identified at pre-application stage, the Council's reasons for requiring this have been explained as part of the planning application and appeal processes. Notwithstanding this, given the Council's first reason for refusal, it is unlikely that compliance with the affordable housing requirements would have changed the overall outcome on the applicant's planning application.
9. I have noted the contents of an article provided by the applicant titled 'A poisoned chalice?'. However, I am unaware of the full details of the costs application to which this relates to. Nevertheless, each application for costs is determined on its merits. Therefore, this does not alter my findings on the application before me.
10. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal
INSPECTOR