



Costs Decision

Site visit made on 14 July 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Costs application in relation to Appeal Ref: APP/W1850/W/21/3272317 Land off Mill Lane, Colwall, Worcestershire WR13 6EQ

- 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 Herefordshire Council for a full award of costs against Mr Andrew Cockayne, Kendrick Homes Limited.
 - The appeal was against the refusal of planning permission for outline planning application for residential development with all matters reserved except for access.
-

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 local planning authority's ('LPAs') application for costs is based on the alleged unreasonable behaviour of the applicant and wasted expense, for the reasons, as considered below.
4. Subsequent to the refusal of the applicant's planning application and submission of his appeal, the LPA emailed the applicant's agent on 27 May 2021 to set out the implications of the Colwall Neighbourhood Development Plan Referendum result for the appeal and advised that should he continue to proceed with the appeal, the LPA would make a costs application. The applicant's agent responded by email on 17 June 2021, and amongst other things advised that on the instructions of the applicant he would not withdraw the appeal.
5. In summary, the LPA contend that the appeal has no chance of success based on various reasons, including the provisions of the Colwall Neighbourhood Development Plan 2021-2031 ('Colwall NDP'), the lack of exceptional circumstances to support major development within the Malvern Hills Area of Outstanding Natural Beauty and the absence of material considerations for allowing the appeal. Notwithstanding this and despite the applicant acknowledging that the Colwall NDP, which was 'made' on 14 June 2021 can be afforded full weight, it is a matter of planning judgement how I as the decision maker consider the evidence before me in determining the appeal. Therefore, I do not consider it unreasonable for the applicant to have continued with the appeal.

6. I have taken account of the fact that the applicant's appeal was made following the publication of the Council's revised Housing Land Supply data, dated 2 February 2021. However, there is no certainty that the applicant or his agent were aware of the revised data and therefore knowingly relied on information that was inaccurate.
7. Based on the LPAs decision and submissions, I do not support the applicant's assertions that the LPAs decision to refuse the application is vague, generalised and lacking in any objective analysis or evidence in respect of what was then the draft Colwall NDP. Nevertheless, this is also a matter of planning judgement and is not in itself an example of unreasonable behaviour which justifies an award of costs.
8. The observations made by the applicant's agent on the result of the Colwall Neighbourhood Development Plan Referendum do not affect the planning merits of the appeal, my decision or this costs application.
9. Given all of the foregoing, I find that the applicant did not act unreasonably in this case. Accordingly, it is not necessary to consider the question of unnecessary or wasted expense. I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has not been demonstrated.

M Aqbal
INSPECTOR