
Costs Decision

Hearing held on 26 July and 2 August 2022

Site visit made on 2 August 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th August 2022

Costs application in relation to Appeal Ref: APP/J1860/W/21/3273533 Land at Cadmore Lakeside Hotel, Berrington Green, Tenbury Wells, WR15 8TQ

- 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 Mr and Mrs Ephraims for a partial award of costs against Malvern Hills District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 25 holiday lodges and associated car parking.
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Decision

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

The submission for Mr and Mrs Ephraims¹

2. A partial award of costs is made on the basis of two elements, firstly procedurally by causing an unnecessary adjournment to the hearing and, secondly, substantively by failing to adequately evidence the character and appearance case.

Procedural

3. The start date for the appeal was 31 May 2022. The hearing date of 26 July 2022 was confirmed on 20 June 2022. The Council sent notifications of the hearing date, including confirmation that the hearing would be a hybrid event. The notification letters contained a link to the Microsoft Teams meeting for the hearing. However, the link did not function properly. The Council was made aware of this on 19 July 2022 but it was not resolved. Therefore, those wishing to attend online were unable to take part. This is the electronic equivalent of providing the wrong address for an in-person venue. The Inspector, concerned about procedural unfairness, adjourned the hearing until 2 August 2022.
4. The applicant has incurred significant costs as a direct result of this unreasonable behaviour leading to the adjournment. In particular, the witnesses and legal representative were required to prepare for and to attend the abortive hearing on 26 July 2022, as well as the re-arranged hearing on 2 August 2022. As such, these costs should be awarded to the applicant.

¹ The application was made both in writing, dated 1 August 2022, and orally at the hearing

Substantive

5. The Council failed to produce evidence to substantiate the character and appearance reason for refusal. It made vague, generalised assertions about the proposal's landscape and visual impact, unsupported by any objective analysis. Landscape and visual matters are expert topics that require an understanding of the industry standard approach of the Guidelines for Landscape and Visual Impact Assessment Third Edition, dated 2013 (GLVIA3). The Council did not bring a landscape witness to the hearing, nor were his partially supportive comments included in the summary consultation responses of the Officer's Report. The Council therefore failed to properly exercise its development management responsibilities by partially refusing the application in a manner which does not stand up to scrutiny on the planning merits of the case.

The response by Malvern Hills District Council

6. The Council responded by stating that hybrid events are comparatively new and most events until recently were set-up by the Planning Inspectorate, not the Council.
7. On character and appearance, the Council stated it is focussed on the immediate valley setting and the Public Rights of Way, not wider landscaping. It does not require a landscape professional to make this judgment.

Reasons

8. 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 expense in the appeal process.

Procedural

9. The Council failed to adequately notify the public of the hearing. The electronic link only partially worked and it was not possible to have confidence that all persons that wished to attend the hearing could do so. The Council were made aware of this one week ahead of the hearing and measures could have been taken to rectify the situation, or at least to postpone the hearing in advance. Instead, it was left to myself to adjourn the hearing after having opened it on the morning of 26 July 2022. Although arranging hybrid events is a relatively new process, it is a reasonable expectation that the Council would provide a working link to the event.
10. The applicant needed to attend, along with his professional team, both the original hearing date and also the adjourned date of 2 August 2022, which would not have been the case without the adjournment. The procedural unreasonableness of the Council has therefore resulted in unnecessary expense in the appeal process for the applicant.

Substantive

11. The Council has not provided a detailed, GLVIA3-based, assessment of the effect of the proposal on the character and appearance of the area, including landscape. However, the Officer's Report includes a fairly extensive assessment of the effect of the proposal on the character and appearance of the area, including directly referencing the Worcestershire Landscape Character

Assessment. The reason for refusal is detailed and relatively clear in what the Council believes the harm to be. Although the landscape officer's comments are not directly referenced in the Officer's Report, they have been provided as part of the appeal documentation, and the overall, corporate position of the Council is clear. At the hearing, the Council officer, who was an experienced planning professional if not a landscape specialist, provided reasonable reasons for the Council's objection to the proposal on these grounds.

12. Overall, whilst lacking the formalised process of a GLVIA3 or similar assessment, the Council has properly exercised its development management responsibilities by providing clear and detailed reasons for the character and appearance reason for refusal. Therefore, it has not behaved unreasonably in a substantive sense.

Conclusion

13. I therefore find that unreasonable behaviour by the appellant resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to procedural unfairness and that a partial award of costs is justified.

Costs Order

14. 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 Mr and Mrs Ephraims, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurrent in dealing with the adjournment of the hearing from 26 July 2022 to 2 August 2022; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Malvern Hills 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.

O S Woodward
INSPECTOR