



Costs Decision

Site visit made on 6 December 2022

by L Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/22/3294632 Land off Common Road, Corston, Malmesbury, Wiltshire, 392288, 184355

- 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 The Warden & Freemen of Malmesbury for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the erection of 4 dwellings.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities and the applicant considers that the Council have exhibited unreasonable behaviour on a number of these.
3. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's Ecologist and the Environment Agency were both satisfied that the ecological value of the Local Nature Reserve (LNR) would not be harmed, subject to suitably worded conditions. Whilst Natural England requested further details on whether the interception of surface water would significantly reduce water supply to the ground fed pond within the LNR, the Council's Ecologist was satisfied that groundwater flows and quality would not be altered by the development, due to the distance between the proposed buildings and the LNR.
4. Whilst the concerns of the local residents and the objection from the warden for the LNR are acknowledged, the decision of the Council to object to the development on the basis of ecological harm to the LNR was unsupported by any objective analysis, without any substantiated evidence, and thus was unreasonable behaviour. Indeed, having carefully considered the technical evidence before me and the views of the relevant statutory consultees, I have concurred with the applicant on this matter.

5. The lack of the Council's consideration of the additional report, titled 'Ground Investigation – Groundwater Monitoring', dated November 2021 prepared by Paddock Geo Engineering and submitted with the appeal, was not in itself unreasonable given it was not submitted with the planning application. However, in these circumstances, the applicant has been faced with the unnecessary expense of defending the appeal on the grounds of the ecological value of the LNR. An award against the Council in this specific respect is justified.
6. Based on the limited evidence before me of this other scheme, there appears to be differences between the appeal scheme before me and that considered under the other appeal decision at Lydiard Millicent¹. Most notably that the scheme at Lydiard Millicent was considered to satisfy the three criteria set out in Policy CP2, which is a notable difference from the proposal before me. I therefore do not consider that the Council have behaved unreasonably in regard to the consideration of another appeal decision.
7. The Council was aware that the tilted balance was engaged at the time of the decision. This is clear from the Officer's report to the area planning committee. However, the weight to be afforded to affordable housing is a matter of planning judgement for the decision maker. Due to this finely balanced balancing exercise, I consider that it was reasonable for the Council to come to a different conclusion on this matter.

Conclusion

8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described by the Planning Practice Guidance, has been demonstrated. A partial award of costs, to cover the expense incurred by the applicant in contesting the part of the refusal reason on the ecological value of the LNR, is justified.

Costs Order

9. 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 Wiltshire Council shall pay to The Warden & Freeman of Malmesbury the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's refusal reason in relation to the ecological value of the LNR.
10. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Laura Cuthbert

INSPECTOR

¹ APP/Y3940/W/16/3154507