



Costs Decision

Site visit made on 18 April 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2023

Costs application in relation to Appeal Ref: APP/J1860/W/22/3306186 Land adjacent to Sandyfields, Kingswood, Martley WR6 6PD

Easting (x) 374966, Northing (y) 259703

- 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 Neil Jessup - Jessup Brothers Limited and Citizen Housing Group Limited for a full award of costs against Malvern Hills District Council.
 - The appeal was against a refusal to grant planning permission for 'Outline application with all matters reserved (except for access) for the erection of up to 52 dwellings, including 42% affordable homes, up to 10no. self-build plots and a public car park together with ancillary works'.
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Decision

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

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.
3. The PPG confirms that planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
4. The PPG also provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. The appellant contends that the Council failed to have sufficient regard to previous appeal decisions regarding housing land supply and argues that had they given appropriate weight to this matter that this would have shifted the planning balance.
6. The Council has advanced a 5-year housing land supply (5YHLS) on a plan wide basis in the previous appeal examples I have seen. This differs from the

approach in this appeal where the Council sought to include housing from the Worcester Urban extensions from within the Wider Worcester Area policy area.

7. Even so, the Council is in agreement that if regard is to be had to the adopted development plan, then the relevant area for assessment for calculating 5-year supply would be the Malvern Hills (excluding Wider Worcester Area) policy area. The previous appeal examples make it very clear that regard should be had to the development plan and that it is not the role of a Section 78 appeal to conclude how to calculate the 5YHLS, rather that this was a matter for the plan making process. Therefore, there is no justification from the Council to continue to advocate an approach to calculating 5YHLS which departs from the spatial distribution for housing in the development plan.
8. Shortly before the hearing date, the Council sought to submit late evidence in respect of its housing land supply position. Following opening of the hearing, this evidence was retracted. This saved time at the hearing but the submission of late evidence would no doubt have resulted in some additional preparatory work for the appellant.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Neil Jessup - Jessup Brothers Limited and Citizen Housing Group Limited, the costs in the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the 5-year housing land supply main issue; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

M Russell

INSPECTOR