



Costs Decision

Site visit made on 31 May 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

**Costs application in relation to Appeal Ref: APP/W1850/W/22/3307131
Site adjacent to Homelands, Village Link Road, Orcop, Herefordshire
HR2 8SD**

- 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 Rory Jones for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for proposed new dwelling.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant considers that the Council and its Planning Committee have been unreasonable in refusing permission on drainage matters, despite the advice of their own drainage consultant and planning officers. Site-specific infiltration testing was undertaken within the appeal site, which found the groundwater conditions and drainage design to be suitable and compliant with the Orcop Neighbourhood Development Plan (NP). Its concerns were based on unsubstantiated anecdotal claims by local residents, unsupported by objective analysis. The Council has provided no evidence of the failure of drainage systems locally, including in its response to a Freedom of Information (FOI) request.
4. The Council believes that it has not acted unreasonably. Its concerns in respect of drainage were reliant upon the need to interpret percolation/infiltration test results from a neighbouring development site. This was open to interpretation and in the context of difficulties locally. The submission of further drainage information in a subsequent application demonstrates the weakness of the appeal proposal in this respect. NP Policy ORC5 now carries full weight and requires site-specific viability testing rather than reliance on data from the adjoining site. As such, and taking into account local knowledge on this issue, it was not unreasonable for the Council's Planning Committee to reach a decision that differed from its professional officers.

5. The PPG¹ gives examples of unreasonable behaviour which include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The appellant seeks all of their costs associated with the preparation and submission of the entire appeal submission. However, the substance of the costs claim only refers to drainage matters, which formed the second reason for refusal. As such, I find that in respect of its first reason for refusal the Council has not acted unreasonably.
6. In respect of drainage, I recognise the concerns of local residents and others about the impact of surface and foul water resulting from the proposal. However, although the second reason for refusal refers to the recent failure of nearby private drainage infrastructure, the Council's response to the FOI request was that it had no evidence of the failure of drainage systems locally.
7. Furthermore, I have been provided with no objective technical evidence from the Council to support its case. The viability testing carried out on-site found no evidence of a high water-table at the site. Although seasonal variations may not have been tested at the time of the Council's decision, this was not significant enough for the Council's Land Drainage consultee to object to the proposal, and at a time when then-draft NP Policy ORC5 in respect of this matter carried less weight.
8. As such, the Council's assertions about the impact of the proposal on drainage were unsupported by objective analysis. The Council has therefore acted unreasonably in refusing permission on the basis of the second reason for refusal. In being forced to defend its position in this respect, the applicant has incurred additional unnecessary and wasted expense.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of drainage matters. A partial award of costs is therefore warranted.

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 Herefordshire Council shall pay to Mr Rory Jones the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the drainage aspects of the Council's case; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Herefordshire 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 Marigold

INSPECTOR

¹ Paragraph: 049 Reference ID: 16-049-20140306