



Costs Decision

Site visit made on 9 May 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Costs application in relation to Appeal Ref: APP/J1860/W/22/3311888 41 Geraldine Road, Malvern, WR14 3NT

- 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 Keon Homes Limited for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal to grant subject to conditions planning permission for demolition of all existing buildings and erection of 28 dwellings (Use Class C3) for 100% affordable housing including access, parking, landscaping and all associated works.
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Decision

1. The application for an award of costs is 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. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities which includes failure to produce evidence to substantiate each reason for refusal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; acting contrary to, or not following, well-established case law and not determining similar cases in a consistent manner.
4. I have noted the recommendation of the Council's Officers. However, the decision is one which is a matter of planning judgement. Whilst Council Members have taken a different view from that of their officers, they are not duty bound to follow the advice of their officers, provided that there are sufficient planning grounds to come to a contrary view.
5. As seen from my decision I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision relating to the impact on the character and appearance of the area. It is apparent to me that the Council had legitimate concerns based on the evidence provided and has substantiated its position on appeal rather than vague, generalised or inaccurate assertions. Despite the applicant's view, the Council's case in this regard is supported by an objective analysis.
6. Notwithstanding the above, I find that the Council's assessment of whether the proposed development would provide satisfactory living conditions for future occupiers somewhat contradictory.

7. The PPG is clear that where a local planning authority wishes to require an internal space standard, they should only do so by reference in their Local Plan to the Nationally described space standard (NDSS).
8. On the one hand the Council acknowledge that compliance with the NDSS is not a requirement of the South Worcestershire Development Plan, yet on the other they contend that the internal size of the units proposed in the context of the NDSS results in a scheme that would not provide acceptable living conditions for future occupiers.
9. Whilst I note that the consideration of acceptable living conditions goes beyond just compliance with the NDSS, I concur with the applicant that the objections to the scheme based on the NDSS, referenced throughout the Council's evidence, amounts to unreasonable behaviour. Moreover, based on the evidence presented by the applicant, it appears that the Council have not taken a consistent approach across the board in respect of internal space sizes.
10. The Council acknowledge that the 'tilted balance', set out at paragraph 11 (d) of the National Planning Policy Framework, is engaged on account of their housing land supply position. Based on the evidence before me I am satisfied that the Council gave due regard to the social and environmental benefits in coming to their decision and undertook an appropriate balancing exercise. As such, I do not agree that the Council failed to follow well established case law.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the Council's objection in relation to the NDSS and that a partial award of costs is justified.

Costs Order

12. 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 Keon Homes Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of rebutting the Council's objection in respect of the NDSS; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Malvern Hills District Council, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Thandi

INSPECTOR