



Costs Decision

Site visit made on 18 April 2023

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Costs application in relation to Appeal Ref: APP/R1845/W/22/3309021 Land at Habberley Road, Kidderminster

- 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 Richborough Estates for a full award of costs against Wyre Forest District Council.
- The appeal was against the refusal of the Council to grant planning permission for development described as "outline planning application (with all matters reserved except for means of access) for erection of up to 124 dwellinghouses, including public open space and landscaping, surface water attenuation and associated infrastructure."

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states that irrespective of the outcome of an appeal, costs may only 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 associated appeal process. The same guidance makes it clear that Councils are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. 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 is cited as an example and is reflected in the applicant's claim. The submission also claims that the appeal has caused the applicant delay and unnecessary expense.
3. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the application was supported by several technical documents and the Local Highways Authority (LHA) were content with the methodology used to undertake surveys and the growth factors applied to overcome perceived lower traffic rates during the COVID-19 pandemic. The LHA concluded that the proposal would not have a harmful impact on highway safety. Whilst concerns from the Parish Council and residents were raised, little evidence has been put forward by the Council to support the reason for refusal and establish that the proposal would result in a severe highway safety impact.
4. It appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted. The refusal of planning

permission therefore constitutes unreasonable behaviour contrary to the guidance in the National Planning Policy Framework (the Framework) and the PPG. The applicant has been faced with unnecessary expenses in the form of generating appeal documents, gaining advice from technical experts, Counsel, and consultants in preparation for the appeal.

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

Costs Order

6. 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 Wyre Forest District Council shall pay to Richborough Estates, the costs of the appeal proceedings described in the heading of this decision.
7. The applicant is now invited to submit to Wyre Forest 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. 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.

Tamsin Law

INSPECTOR