



Costs Decision

Hearing held on 21 November 2023

Site visit made on 22 November 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2023

Costs application in relation to Appeal Ref: APP/J1860/W/23/3326243 Land at (OS 7474 6805) Apostles Oak, Abberley

- 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 Jeavons-Fellows on behalf of C50 Homes Ltd for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for outline application (all matters reserved except access) for the construction of up to 14 entry-level affordable dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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 has alleged that the Council behaved unreasonably by delaying development which should clearly have been permitted having regard to national policy, by acting contrary to well-established case law, by making vague and generalised assertions about the scheme's impact, and by expanding its case at appeal stage to entirely new issues beyond those set out in its single reason for refusing planning permission.
4. It is important to note that, whilst the Council resolved to refuse planning permission contrary to a positive recommendation made by its officers, the scheme has been repeatedly objected to by the Council's Tree and Landscape Officer in his role as an expert internal consultee. Based on the written submissions made by this Officer at planning application stage, which were made available to Committee Members and highlight viewpoint-specific concerns (including from the rear of the Village Hall), and which have been repeated/refashioned within the Council's Statement of Case, it cannot be fairly asserted that vague or generalised assertions were made about the scheme's impact. The absence of detailed Committee Meeting minutes does not alter my assessments in this regard.
5. The planning application was determined on a 'straight' rather than 'tilted' balance in lieu, I understand, of a position taken at the Committee Meeting¹ that the Council was able to demonstrate a five-year supply of deliverable

¹ held 5 April 2023

housing sites. Whilst this was inconsistent with a stance taken at a separate appeal hearing² held during the same month, where a narrow supply shortfall was conceded in advance of that event, housing supply calculations/positions can materially evolve over short timeframes, as is reflected in an April 2023 position statement³ where a supply figure in excess of five-years was calculated. Based on the evidence before me, the Council was not bound by the position it took with respect to the separate appeal hearing. In any event, consistent with the outcome of the planning appeal to which this application relates, it would not have been unreasonable to refuse planning permission even had the tilted balance been engaged.

6. Despite brief references within its Statement of Case to services and facilities within Abberley likely already being under pressure and to it being questionable whether the site represents the right location for affordable housing, the Council has confirmed at appeal stage that, from its perspective, the principle of development is not in contention. Moreover, the Council did not make lengthy submissions in these specific respects and has sought, plausibly, to clarify that such references were made in the context of guiding the level of weight to be attributed to benefits associated to the delivery of affordable housing. Accordingly, in this sense, I do not identify unreasonable behaviour necessitating unnecessary expense.
7. Any suggestion that Members of the Committee did not recognise or attach any weight to the benefit of providing new housing (entry-level affordable or otherwise) has not been clearly substantiated. Indeed, the Committee Report that was before them includes a thorough exploration of the benefits associated to the delivery of an entry level exception site and the resolved reason for refusal references identified harm not being 'outweighed' by any identified benefits. Further, the level of weight to be afforded to scheme benefits is a matter for the decision-maker and it was not wholly unreasonable for the Council to assert, at appeal stage, that moderate weight should be attached to the benefit of delivering entry-level affordable housing. This is notwithstanding the specific approach taken by an Inspector⁴ in 2021 to apportioning weight at a site situated elsewhere and within a different local authority area.
8. Whilst the appellant has sounded frustration with respect to the timeliness of the Council's handling of the planning application, it must be noted that costs can only be awarded with respect to unnecessary or wasted expense generated at appeal stage. Moreover, it has not been demonstrated that development was delayed that should clearly have been permitted, nor that the Council acted contrary to well-established case law or made vague or generalised assertions about the scheme's impact. Further, the Council's case at appeal stage was not unfairly expanded so as to incorporate entirely new issues beyond those set out in its reason for refusal.
9. Therefore, in my judgement, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Andrew Smith

INSPECTOR

² Appeal Ref: APP/J1860/W/22/3306186

³ Addendum to the South Worcestershire Five Year Housing Land Supply Report April 2023

⁴ Appeal Ref: APP/Y3940/W/20/3249284