



Costs Decision

Site visit made on 5 January 2024

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Costs application in relation to Appeal Ref: APP/J1860/W/23/3319152

• Land at (OS 8163 5361) Bransford Road, Rushwick

- 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 Custom Land Limited for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for the erection of 8 dwellings together with vehicular/pedestrian access from Coronation Avenue; green infrastructure including landscaping, play area and sustainable drainage; and other related infrastructure.
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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 (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 indicates examples of unreasonable behaviour, this includes 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. The PPG also indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.
4. The Council withdrew its first reason for refusal at the beginning of the appeal, acknowledging that it could not demonstrate a five-year housing land supply (5YHLS). However, this was off the back of a more recent appeal decision¹, at Post Office Lane, Kempsey. That appeal decision was rather conclusive in finding that the Council was unable to demonstrate a 5YHLS, albeit the appeal decision was made several months after the determination of this application.
5. The applicant has argued from the outset that the Council was unable to demonstrate a 5YHLS, which is seemingly likely. Nevertheless, based on the evidence before me, including the findings of the appeal decision at Post Office Lane (and its related costs decision), it appears that the Council was not unreasonable in arguing that it could demonstrate a 5YHLS at the time that this current planning application was determined (i.e. February 2023). Even if ultimately, the Council's view was flawed.

¹ APP/J1860/W/22/3313440 - Land At (OS 8579 4905) Post Office Lane, Kempsey, Worcestershire, decision date 14 August 2023

6. Therefore, despite not seeking to defend its first reason for refusal in light of more recent evidence on its 5YHLS, I do not consider that the Council acted unreasonably in initially refusing the original application due to it not according with its adopted spatial strategy for new development. Consequently, an additional planning application or appeal would have been required in any case.
7. The Council's second reason for refusal relates to the need for a legal obligation to be entered into. This would have been required in any event. As such, the preparation and completion of the applicant's unilateral undertaking would have still been necessary, while the extent of work involved is likely to have been similar despite being progressed through the appeal process.
8. Furthermore, the Council's second reason for refusal also relates to the lack of a proportional contribution toward the South Worcestershire Infrastructure Delivery Plan 2022 (SWIDP), so as not to undermine its future delivery. As will be seen through my main decision, I do not agree with the weight that the Council has given to the SWIDP. However, it remains a material planning consideration to which it was entitled to make a planning judgement upon, whilst the Council has also identified the perceived harm that would arise from no contribution to the SWIDP being made.
9. Therefore, although I have ultimately reached an alternative conclusion to the Council, I have not found unreasonable behaviour resulting in unnecessary or wasted expense at appeal has occurred. Consequently, an award of costs is not warranted.

Lewis Condé

INSPECTOR