



Costs Decision

Hearing Held on 21 November 2024

Accompanied site visit made on 21 November 2024

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 29 November 2024

Costs application in relation to Appeal Ref: APP/J1860/W/24/3339751 Land off B4208, Castlemorton, Malvern WR13 6BS

- 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 J Smith for a full or partial award of costs against Malvern Hills District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to 3 No Traveller pitches and associated works including 3 No day rooms, 3 No mobile homes, 3 No touring caravans and hardstanding.
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Decision

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

The submissions for Mr J Smith

2. The application was made in writing prior to the hearing, and supplemented by brief oral submissions at the hearing. The application is for a full award of costs, or in the alternative a partial award.
3. The application is made on the basis that the Council was unreasonable in both procedural and substantive matters. The gist of the matters raised is as follows.

Procedural

4. The Council failed to respond to questions relating to the sustainability of the site location.
5. The Council failed to agree a statement of common ground (SoCG).

Substantive

6. The Council failed to produce evidence to substantiate its reason for refusal dealing with the landscape issue.
7. The Council provided information in relation to the need for Traveller pitches which failed to disclose its methodology and as a result conceals relevant evidence. In addition it failed to include a site list so the Gypsy and Traveller Accommodation Assessment (GTAA) could not be properly interrogated.

8. The Council failed to take a consistent approach to the issue of locational sustainability and made concessions at the hearing so that the reason for refusal on this matter was not substantiated.

The response by Malvern Hills District Council

9. The response of the Council was made in writing and the gist of its submissions is as follows.

Procedural

10. The Council was clear in its response to the matter of the appeal site location. This is dealt with in the officer report and statement of case and this appeal raised no new issues.
11. The Council clearly set out its response to the Appellant's submitted SoCG. There is no legal requirement for the SoCG to be in a particular format and the Council made its position clear.

Substantive

12. The Council's statement of case is clear that landscape matters have been addressed and included within the officer report.
13. There is no deliberate concealment of evidence or methodology in relation to the assessment of need. The GTAA was bound by data protection interests and the site list was provided to the Council in line with usual practice.
14. The Council acknowledges the need to take a consistent approach to the application of policy. However the case cited by the Appellant is different and it is not unreasonable to reach a different judgement in the current case.

Reasons

15. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
16. The Appellant chose to communicate with the Council on the matter of the reason for refusal relating to the location and sustainability matters. That no response was received on a number of occasions is unfortunate but as the matter was to be heard orally there was ample opportunity for both sides to make their substantive case during the appeal. It was not necessary for the Appellant to press the Council on the point repeatedly as the Council's position was explained in the officer report and was addressed in hearing submissions. Although the lack of response from the Council could be considered to be somewhat impolite I do not consider that the Council's behaviour crossed the threshold into being unreasonable.
17. The failure to agree a SoCG in a standard format is regrettable. Guidance and procedure rules are clear that a SoCG is required and that the Council must respond to the draft prepared by the Appellant within the set timescales. Whilst there is sometimes a delay in reaching an agreement there should be no circumstances in which a SoCG is not achievable and signed by both parties. The Council's response to the draft SoCG in its submissions was inadequate and did not allow a proper understanding of what matters were agreed and not

agreed. Furthermore the procedure rules provide that opportunity must be given for the inspection of the SoCG by any party requesting it. That could not have happened in this case since there was no SoCG. The Council has not given an adequate explanation of why it did not respond in the required manner. The failure to agree a SoCG amounts to unreasonable behaviour in conflict with procedure rules and guidance.

18. It seems to me that the Council adequately addressed the landscape issue in this case. I see no reason for the Council to specifically address the Appellant's landscape appeal statement if it considers that the relevant matters have been covered in its own case submissions. There was no doubt in my mind about the Council's position in this matter. I am satisfied that the Council produced evidence to substantiate the landscape reason for refusal and that no unreasonable behaviour was demonstrated in this regard.
19. The updated GTAA provided information on the current and future need for pitches. Methodology of these assessments is, in my experience, inevitably subject to scrutiny and, frequently, challenge. However, it is a Council commissioned study and I would not expect the Council to have full control of the methodology of its preparation by external consultants. Whilst I understand the criticisms made and address some of these briefly in my decision, I do not accept that the Council sought to conceal any of the methodology in the GTAA process. It simply produced the finished assessment. Similarly I do not criticise the Council for not providing a site list in order for the Appellant to verify the judgements made in the GTAA. I accept that the assessment followed the consultant's usual procedure in this respect. I do not find unreasonable behaviour here.
20. Whether or not a particular location is acceptable is dependant on many factors, and it is rare for circumstances to be closely duplicated on different sites. Whilst I understand the Appellant's position the Council has argued that each case is subject to a discrete assessment and judgement, and that seems to me to be the correct approach. The particular appeal referred to (Baughton) has clear differences to the circumstances surrounding this case. I see nothing unreasonable in the Council making a different judgement relating to locational sustainability in these 2 different appeals. Although some minor concessions were made at the hearing in relation to this point this does not, of itself, amount to a demonstration of unreasonable behaviour.

Conclusion

21. For the most part I do not accept that the Council has acted unreasonably. The single matter on which I do find unreasonable behaviour relates to the failure to engage with the Appellant and agree a SoCG. It is incumbent on the parties at appeal to follow the correct procedures and in this instance the Council did not do so.
22. The second leg of any claim for a costs award is that there must be unnecessary expense as a result of the unreasonable behaviour. In this regard I accept that the Appellant was put to some inconvenience and trouble over a period of time in seeking to elicit a response to the draft SoCG provided. As such a partial award of costs for that part of the application is justified.

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

1. 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 Mr J Smith the costs of the appeal proceedings, limited to those costs incurred in seeking to engage with the Council to provide a statement of common ground; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal described in the heading of this decision
24. The applicant is now invited to submit to Malvern Hills 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.

Philip Major

INSPECTOR