



Costs Decision

Site visit made on 8 April 2025

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2025

Costs application in relation to Appeal Ref: APP/H1840/W/24/3350741

Land at (OS 9214 5555), Church Road, Crowle, Worcestershire

- 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 Spitfire Homes Ltd for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for 30 dwellings (use Class C3, including 12 affordable homes, public open space along with detailed access not Church Road and associated infrastructure including drainage and landscaping without complying with a condition attached to planning permission Ref W/22/02683/FUL dated 22 December 2023 .
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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. The PPG gives examples of the types of behaviour that could give rise to an award of costs against a local planning authority. They are not exhaustive but include preventing or delaying development which should clearly be permitted; failure to produce evidence to substantiate each reason for refusal, or vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
4. The applicant contends that the Council as Local Planning Authority via its elected Members acted unreasonably in refusing the application to vary a planning condition relating to foul drainage. The applicant notes that Council Members have subsequently approved schemes facing similar drainage matters at other Planning Committees. The applicant points out that it enjoyed a good level of engagement with Planning Officers prior to determination of the application, at both the original application and the later s73 application, as evidenced by the correspondence and recommendations to approve both applications. The applicant confirms that its allegation that the parties disagreed to the wording of the disputed condition is in relation to the elected Members, not Officers.
5. The Council contend that it did not act unreasonably. It discussed and agreed the alternative wording for the condition to ensure there was an adequate drainage

strategy and no pollution. The details of the case and issues with the proposal are set out in the Committee Report.

6. Members are fully entitled to disregard or disagree with officers' advice, as long as the Council can clearly demonstrate why a proposal is unacceptable on planning grounds.
7. The Minutes to the Planning Committee briefly set out that a number of Members had concerns about the apparent change in Severn Trent Water's (STW) position from the application to originally grant the 30 dwellings. It appears that based on accounts of past discharge events into Bowbrook, Members were not convinced that there would be satisfactory disposal of foul sewage.
8. Members had before them an account of why the applicant needed to vary the foul drainage condition, and a clear summary of each of STW responses as the wording of the condition evolved to one that was eventually mutually agreed between the applicant, STW and the Council's Planning Officers. STW, as the statutory undertaker, agreed that if the applicant provided pre-treatment then it could now accept foul waste at its own treatment works from a maximum of 30 dwellings.
9. I find from the submitted evidence to the appeal that Planning Officers were fully engaged with dialogue and discussion with the applicant and STW to find an acceptable drainage scheme and ensure that the wording met the needs of all parties involved. This manifested in an Officer recommendation for approval.
10. I find that Members made their decision without firm evidence or understanding of the drainage situation, with the Minutes recording some 'confusion'. If Members had such technical concerns, it was in their power to have asked for the application to be deferred for additional information, details or explanation to be provided and the application be brought back to the Planning Committee at a future date.
11. As a result the applicant has proceeded with the appeal to refute the reason for refusal. In determining the appeal I found the Council's case lacked the necessary technical evidence to clearly demonstrate why the variation of the condition would be unacceptable and it failed to provide clear evidence to substantiate its reason for refusal. The onus is on the statutory undertaker to maintain and where necessary upgrade the capacity of drainage infrastructure to deal with demand – it is not a reason for refusal.
12. In the light of the above I conclude that the Council did not properly evaluate the application and the merits of the revised foul drainage scheme and reworded condition. In this regard I conclude that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore justified in this case.

Costs Order

14. 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 Wychavon

District Council shall pay to Spitfire Homes Ltd, the costs of the appeal proceedings described in the heading of this decision, with such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The applicant is now invited to submit to Wychavon 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.

K. Stephens
INSPECTOR