



## Costs Decision

Site visit made on 26 March 2024

by **L Francis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 24 May 2024**

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### **Costs application in relation to Appeal Ref: APP/W0340/W/23/3327705 Land South of Tower Gardens, The Street, Mortimer Common RG7 3RW**

- 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 R Barter, T A Fisher Sons Ltd for a full award of costs against West Berkshire District Council.
- The appeal was against the refusal of planning permission for Section 73: Variation of condition 6-approved plans of approved application 17/03004/OUTMAJ: This outline application comprises two parts:
  - Part a) The erection of 110 dwellings including affordable housing, public open space and associated landscaping with all matters reserved other than access and layout;
  - Part b) The erection of a 3FE Infant School and 900sqm GP surgery (Use Class D1) with shared parking area, with all matters reserved other than access.
- The details for which approval is sought are: Appearance, landscaping, layout and scale.

### **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. In claiming the costs of the appeal, the applicant submits that the Council has acted unreasonably in substantive terms. It is asserted that the Council's statement of case failed to engage with the appellant's case and the Council failed to substantiate the reasons for refusal.
4. The PPG makes it clear that a local planning authority may be at risk of a substantive award of costs if it fails to substantiate its reasons for refusal at appeal, and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The Council, specifically its planning committee, refused the planning application against officer advice. The decision in this case hinged on making a judgement on the effect of the proposed retaining wall on the character and appearance of the area.
6. Whilst I appreciate that the issue of the lower slopes of the site and the position of housing may have been discussed in detail at the NP Examination, the resultant NP policies allow for a degree of judgement in their interpretation regarding the detailed treatment of the transition in levels. The Council were not unreasonable in taking a contrary view to the planning officer regarding the impact of the particular arrangement of the retaining wall shown in the

reserved matters application; the application of the development plan policies was a matter of planning judgement.

7. The Council's statement of case was not detailed, but it outlined the reasons for the decision, along with the appropriate policies. Although I did not share their conclusions, I am satisfied that the Council gave a reasoned assessment for their decision, and it was not unreasonable for them to have refused the reserved matters application.
8. I note that the minutes of the planning committee meeting were supplied as part of the Council's rebuttal to the applicant's costs claim. They indicate that various matters were discussed which had no direct relevance to the decision the committee were being asked to make. However, there is no substantive evidence to suggest that they were misled, or, by the end of the debate when voting occurred that they did not know what they were being asked to vote on. Irrespective of whether the committee members viewed the site from the footpath to the south, they were able to make a judgement on the merits of the scheme before them.
9. The presence of a fallback position is immaterial to the costs claim, which is necessarily based on the appeal scheme.

### **Conclusion**

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

*L Francis*

INSPECTOR