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## Costs Decision

Site visit made on 5 July 2016

**by Paul Singleton BSc (Hons) MA MRTPI**

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

**Decision date: 28 July 2016**

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**Costs application in relation to Appeal Ref: APP/L3245/W/16/3147776  
Land to rear of 41 Furlongs Road, Cleobury Mortimer, Shropshire DY14  
8AR**

- 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 Percy Cox Properties Ltd for a full award of costs against Shropshire Council.
  - The appeal was against the refusal of planning permission for residential development for the erection of 12 number detached and semi-detached houses including garages and road design.
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### Decision

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

### Reasons

2. The Government's Planning Practice Guidance (PPG) 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 or wasted expense in the appeal process. The word 'unreasonable' is used in its ordinary meaning and unreasonable behaviour can include failure by a planning authority to substantiate a stated reason for refusal of planning permission and a decision taken contrary to the authority's professional advice without reasonable grounds.
  3. Very clear advice was given by officers to the Planning Committee that there were other appeal decisions where highway concerns, similar to those raised at the Committee meeting, had been found not to justify a refusal of permission and that a refusal on highway grounds may not be capable of being sustained on appeal. I accept that the absence of an objection from the Highways Officer does not prevent the Council's Planning Committee from reaching a different conclusion provided that that decision can be clearly substantiated.
  4. In this case, however, the Council has not provided any evidence to substantiate the first ground of refusal. No technical assessment or analysis has been produced to demonstrate that the proposal would have an unacceptable impact on the local road infrastructure or that any harm would be caused to the living conditions of residents of properties fronting the local highway network. The Council's statement does little more than recite the general concerns that appear to have been raised at the Committee meeting in relation to these matters. The appeal statement is incorrect in saying that the
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highway officer's advice did not take account of wider sustainability or amenity issues; those considerations would clearly have been part of that officer's assessment of the application proposal.

5. With regard to the second reason for refusal the Council's costs rebuttal states that the development would deliver mainly larger, detached houses when the local community has expressed a clear preference for smaller/affordable housing. However, that stated community preference is not clearly reflected in the documents that the Council relies upon to support the second reason; neither are there any adopted policies which specify a housing mix for developments such as that proposed. Indeed, the Council's Appeal Statement acknowledges that the proposals are not in clear contravention of an adopted Place or Parish Plan. There was no sound policy basis for the second reason for refusal and no evidence has been submitted to demonstrate what, if any harm, would be caused by the form and type of housing proposed by the appellant.
6. The decision to refuse permission against the professional advice of its officers and its subsequent failure to produce evidence to substantiate the reasons for refusal amount to unreasonable behaviour on the part of the Council. In consequence of that behaviour the appellant has incurred unnecessary and wasted expense through the costs of submitting and pursuing an appeal that should not have been necessary. A full award of costs is therefore justified.

### **Costs Order**

7. 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 Shropshire Council shall pay to Percy Cox Properties Ltd, the costs of the appeal proceedings described in the heading of this decision.
8. The applicant is now invited to submit to Shropshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Paul Singleton*

INSPECTOR