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## Costs Decision

Site visit made on 8 January 2015

**by Keith Manning BSc (Hons) BTP MRTPI**

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

**Decision date: 9 February 2015**

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### **Costs application in relation to Appeal Ref: APP/L3245/A/14/2227517 Land between Twyford Lane and Holyhead Road, West Felton, Oswestry SY11 4EQ**

- 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 T Humphries & Mr G Davies for a full award of costs against Shropshire Council.
  - The appeal was against the refusal of planning permission for residential development and access.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance details the circumstances where an award of costs may be appropriate and I have paid due regard to that guidance.
3. Costs may be awarded where the unreasonable behaviour of a party leads to unnecessary and wasted expense in the appeal process.
4. The applicant claims that the Council refused planning permission by reference to local plan policies without due regard to the intentions of the National Planning Policy Framework ('the Framework') and that it has not provided relevant objective evidence to support its vaguely reasoned decision, including in relation to housing land supply.
5. The Council's response acknowledges that the Council departed from the advice of its officers in refusing the application but submits that it was entitled to do so in that it placed greater weight on the harms it identified in the context of a planning balance.
6. It does seem to me that the Council did not lightly or capriciously refuse the application but rather started with the development plan, placed some weight on the emerging SAMDev and gave weight to the fact that the proposed development was not plan-led and its understanding that the land involved was, on the balance of probability, best and most versatile. Plan-led development and protection of best and most versatile land are both intentions of the Framework and conflict with such intentions is not necessarily outweighed by the absence of a five year land supply, a matter which the officers advised was now largely resolved in anticipation of the SAMDev.

7. Essentially, the Council needed to conduct a balancing exercise in the context of the Framework (which is extensively referenced in the officer's report) to decide whether or not it considered the development to be sustainable in those terms, but it is not always necessary to use the term 'sustainable development' in so doing or refer explicitly to the Framework. The essential requirement is to start with the development plan and with that in mind arrive at a balanced decision on the basis of considerations which are material to planning, including the policies of the Framework, some of which, inevitably, will be essentially matters of judgement rather than solely objective factual evidence. Such judgement, and the weight to be accorded to various material considerations, can vary between lay decision makers and professional advisers and, indeed, between individual professionals. That is the nature of decision making in the public interest.
8. I have read the minute of the meeting at which the elected members decided to take a contrary view to that of the relevant officer. It seems clear to me that the approach taken, whilst arguably not 'best practice' in a technical sense, was not inherently unreasonable. The Council's reasons were in my view communicated adequately intelligibly in the decision notice, notwithstanding the absence of explicit reference to individual policies or the Framework. Material harms were balanced against material benefits and it is clear enough from the wording of the decision notice itself that the approach and intentions of the Framework and the intentions of the existing and emerging development plan were in the mind of Council members.
9. Furthermore, the Council's subsequent statement in defence of its decision explains the way in which the Council considered the application to be contrary to existing and emerging policy and the balance struck on matters which include, essentially, planning judgement in respect of an application made in outline form. I acknowledge that the five year land supply remains a matter of contention but the absence of such a supply does not necessarily trigger approval but rather a balanced view, in the context of the Framework as a whole, as to whether or not the proposal represents sustainable development.
10. For reasons that differ from those of the Council I have concluded that the proposal, as presently conceived, does not represent sustainable development. However, on balance, for the reasons given above, I do not consider that the Council has in this instance behaved unreasonably. There is in my view sufficient justification for the judgements it has made to avoid an alternative conclusion, even though I do not endorse the particular reasons given.
11. I therefore conclude that unreasonable behaviour leading to unnecessary and wasted expense has not been demonstrated and that the application for costs should not succeed.

*Keith Manning*

Inspector