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## Costs Decision

Site visit made on 5 August 2015

by David Murray BA (Hons) DMS MRTPI

Decision date: 4 September 2015

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### **Costs application in relation to Appeal Ref: APP/L3245/W/15/3031289 Land opposite Top Farm, Kinton, Nesscliffe, Shrewsbury, SY4 1AZ**

- 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 Warner for a full award of costs against Shropshire Council.
  - The appeal was against the refusal of an outline application for the erection of three detached dwellings and formation of new driveway and vehicular access.
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### **Decision**

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

### **Reasons**

2. The appellant submits that the Council have acted unreasonably in that it has refused development that should have been permitted; made generalised statements about the proposal's impact; not determined similar cases in a consistent manner; and failed to produce evidence to substantiate each reason for refusal. All of these factors are set out in the Planning Practice Guidance as examples of what may constitute unreasonable behaviour. Further, the appellant highlights the delay in processing the application and the inconsistencies over the assessment of the proposal, where the proposal was originally thought by a planning officer to be acceptable, and then the Council changed its mind without good reason.
3. The Council indicates that it formally decided the application in accordance with the development plan and national guidance and has not acted unreasonably in that it has been able to substantiate each reason for refusal.
4. The national 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.
5. Dealing first with the procedural issues associated with the processing of the planning application, the Council was tardy in that it did not decide the application within the national target for this form of development. Further, it is unfortunate that, apparently, a preliminary officer assessment was published for public view and then a formal decision based on a contrary assessment was issued without explanation. Nevertheless, I have taken into consideration that the development plan was in a fluid state at that time when emerging policies in the SAMDev, designed to give greater detail to the adopted Core Strategy,

- could be given greater weight. It is also apparent that the local housing land supply issue was fluid. Consideration also had to be given to the Written Ministerial Statement about affordable housing issued on the 28 November 2014.
6. Taken on their own, while these procedural aspects of the planning application are not consistent with good practice, I do not consider that they amount to a clear case of unreasonable behaviour.
  7. Turning now to the planning merits of the case, at the conclusion of my planning assessment I agreed with the Council's formal view that the proposal did not accord with the stated policies about the development being outside of the village and the adverse impact on an area of countryside. This involved a planning judgement based on the policies in the adopted development plan which is a legal requirement. I also found that the Council was able to substantiate both of the reasons for refusal which took into account the development plan and national guidance in the Framework including the overall issue about whether the proposal constituted sustainable development.
  8. As such there was not a clear presumption that the development proposed should have been permitted as the appellant submits. Nor is there clear evidence before me to demonstrate that the Council has been inconsistent in its decisions given that each development proposal must be considered on its individual merits and the circumstances of the site.
  9. Overall, I conclude that while the Council were tardy in reaching a formal decision on application 14/02767/OUT, and acted in a disjointed way in assessing it, the Council did not act unreasonably in refusing the application given the provisions of the development plan. The costs incurred by the appellant in pursuing the appeal were the normal costs arising when the right of appeal is exercised.

### **Conclusion**

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

*David Murray*

INSPECTOR