

## Costs Decision

Site visit made on 12 April 2015

**by William Fieldhouse BA (Hons) MA MRTPI**

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

**Decision date: 08 June 2016**

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### **Costs application in relation to Appeal Ref: APP/R0660/W/16/3142921 Yew Tree Farm, Close Lane, Alsager, Cheshire East**

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
  - The application is made by Muller Strategic Projects for a full award of costs against Cheshire East Borough Council.
  - The appeal was made against the refusal of outline planning permission for residential development and access, all other matters reserved.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process<sup>1</sup>. In this case, the appellant's claim is that the Council's decision to refuse planning permission was lacking in substance, rather than that there were any significant procedural irregularities. I shall, therefore, consider whether that was indeed the case and if so whether unnecessary or wasted expense was incurred as a consequence.

#### *Unreasonable Behaviour?*

3. The Council Committee was not bound to accept the recommendations of officers in determining the planning application. However, it was obliged to have regard to relevant policies in the development plan, national policy, and all other material considerations, and to base its decision on evidence and objective analysis.
4. In this case, I have no reason to doubt that Committee members were familiar with the site, its surroundings and the local road network, or that they had genuine concerns about the cumulative impact of the significant number of committed, planned and proposed developments in and around Alsager.
5. Indeed, at the time that the Committee made its decision in November 2015, the Council had recently defended at appeal a refusal of planning permission relating to a site south of Crewe Road in Alsager and was awaiting the

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<sup>1</sup> PPG ID16-028 and 029.

Inspector's decision<sup>2</sup>. One of the reasons for refusal in that case, based on the advice of officers, was highway safety, and evidence had been presented at inquiry to substantiate that reason. However, whilst it is commendable that the Committee wished to adopt a consistent approach, it was necessary to treat each case on its own merits and have regard to the relevant evidence available at the time.

6. The Committee did have before it specific and up to date evidence of the potential cumulative transport impacts of development in the form of the Alsager Traffic Study Technical Note that had been commissioned by the Council and published in March 2015. That evidence showed that if the various developments took place a number of junctions, including some between the current appeal site and Alsager town centre, would operate over desirable capacity. The study also identified improvement schemes that would enable the local highway network to satisfactorily accommodate the majority of traffic from committed schemes and emerging local plan developments, with the exception of one junction in the town centre.
7. Given this evidence, it was understandable that the Committee were concerned that allowing further developments in Alsager, in addition to those already committed and included in the emerging local plan strategy, would further affect junction capacity. However, there was no evidence before the Committee that I have been made aware of that demonstrates that the operation of junctions in the town above capacity would have a "severe" impact on highway safety, congestion or amenity. Moreover, the clear advice from the Council's highways officers, based on the 2015 technical note and the additional analysis carried out by the appellant's transport consultants, was that the current proposal would have a minimal impact on junctions in the town.
8. Having refused planning permission on highway safety grounds, it was the responsibility of the Council to substantiate that decision at the appeal stage. The statements submitted by planning and transport officers set out the background and explain how the decision was made, but provide no new technical evidence to demonstrate that the impact of the proposal, in addition to others committed and planned, would have a severe impact on the local highway network as alleged in the decision notice or to address the additional highways evidence submitted on behalf of the appellant at the appeal stage. Nor has the Council addressed the conclusion of the Crewe Road appeal Inspector with regard to the impact of that scheme on highway safety and the implications of that for the current proposal.
9. I therefore conclude that the Council acted unreasonably in basing its decision to refuse planning permission on vague and generalised assertions about the impact of the proposal which are not supported by objective analysis or substantiated at the appeal stage.

*Unnecessary or Wasted Expense?*

10. As I have found that the Council did not have good grounds to refuse planning permission, I am of the opinion that the proposal should not have had to be brought to appeal meaning that some of the associated costs, including

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<sup>2</sup> Appeal ref APP/R0660/A/14/2228488: 70 dwellings on land south of Crewe Road, Alsager dismissed 18 January 2016.

completion of the appeal form and preparation of the appeal statements, including those relating to highways matters, should be regarded as unreasonable.

11. However, the preparation of a draft statement of common ground was not required under the written representations procedure, and the provision of paper copies of all documents was specifically requested by the Planning Inspectorate. Those particular costs were not, therefore, directly a consequence of the decision to refuse planning permission and the Council should not be required to meet them. Furthermore, the costs associated with preparing the section 106 unilateral undertaking would have been incurred had the Council resolved to grant planning permission meaning that they should be met by the appellant.

### **Conclusion**

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

13. 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 Cheshire East Borough Council shall pay to Muller Strategic Projects the costs of the appeal proceedings described in the heading of this decision, excluding those costs described in paragraph 11 above.
14. The applicant is now invited to submit to Cheshire East Borough 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.

*William Fieldhouse*

INSPECTOR