

## Costs Decision

Site visit made on 26 September 2016

**by Janine Townsley LLB (Hons)**

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

**Decision date: 4 November 2016**

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**Costs application in relation to Appeal Ref: APP/N2535/W/16/3150309  
Land North of Waterford Lane, Cherry Willingham, Lincoln, Lincolnshire,  
LN3 4AN.**

- 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 PCC Consultants Ltd for a full award of costs against West Lindsey District Council.
  - The appeal was against the refusal of planning permission for new residential development with a mixture of three and four bedrooms with associated parking, private gardens and landscaping.
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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) provides that an award of costs may be made where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
  3. The Appellant claims that the Council prevented the development when it should have been permitted and that it produced no objective evidence in support of its refusal. The PPG advises that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted or fail to produce evidence to substantiate their stance.
  4. The application relies substantially on the decision of the planning committee being contrary to the recommendation of Council officers. It is submitted that the Council has failed to produce any objective evidence in support of either reason for refusal.
  5. Whilst the Council's planning officer concluded that the development would not cause significant harm to the character and appearance of the area, there is an element of subjectivity in this judgement in terms of attributing weight. Consideration of planning applications and appeals, however, often involve finely balanced judgment on matters. The Planning Committee was entitled to weigh matters differently and to conclude as it did, considering potential conflicts with the development plan.
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6. The second reason for refusal relates to the alleged harm caused by noise and vibrations from the nearby railway line. The appellant had, during the application phase, provided a detailed noise and vibration assessment which concluded that mitigation measures could be incorporated to ensure that future resident's living conditions would not be harmed in accordance with the relevant PPG. Furthermore no objections were raised by the Council's Environmental Health Officer. In my decision I concluded that there the Council did not produce any evidence to challenge this objective assessment and for this reason it failed to substantiate its concern that the development would have a harmful impact. In the absence of any evidence to support the second reason for refusal, resulting in the applicant being put to unnecessary expense in appealing this element of the decision.

## **Conclusion**

7. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense as described in the PPG has not been demonstrated in relation to the first reason for refusal but has been demonstrated in relation to the second reason for refusal. For this reason, and having regard to all other matters raised, a partial award for costs is justified.

## **Costs Order**

8. 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 West Lindsey District Council shall pay to PCC Consultants Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the appealing against the second reason for refusal which relates to the impact on noise of the adjacent railway line.
9. The applicant is now invited to submit to West Lindsey District 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.

*Janine Townsley*

Inspector