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## Costs Decision

Hearing held on 15 November 2016

Site visit made on 15 November 2016

**by L Fleming BSc (Hons) MRTPI**

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

**Decision date: 21 December 2016**

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### **Costs application in relation to Appeal Ref: APP/X1545/W/16/3152606 Land North West of Stitches Farm, Lower Chase, Althorne, Essex CM3 6BY**

- 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 Stuart Davis Ltd for a full award of costs against Maldon District Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the re-siting of an agricultural workers dwelling approved at FUL/MAL/14/01008.
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### **Decision**

1. The application is allowed in the terms set out below.

### **The submissions**

2. The appellant's case and the Council's response were both made in writing.

### **Reasons**

3. Planning Practice Guidance (PPG) advises that costs may 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. It states local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably defending appeals. Examples of this include; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
4. It is alleged that the Council have prevented development by persisting in objections to the appeal scheme which an Inspector has previously indicated to be acceptable.
5. The appeal scheme is identical to that dismissed in November 2015<sup>1</sup> except for the submission of a Unilateral Undertaking (UU). In the November 2015 decision the Inspector found a scheme identical to that proposed would not harm the character and appearance of the area.
6. Even though the Council is not obliged to follow the recommendations of its Officers, it is required to give clear reasons for its decisions. I have considered the minutes of the Council meeting where it was resolved to refuse planning

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<sup>1</sup> Appeal Ref: APP/X1545/W/15/3131017

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permission for the appeal proposal. Whilst those minutes make reference to remoteness and the impact of the development in the open countryside due to its size, scale and bulk and the Council's statement expands on these points, these matters were all fully considered by the Inspector in the 2015 appeal decision.

7. Since November 2015 there have been no changes to the development plan. Furthermore, I have not been made aware of any developments nearby which have taken place since November 2015 which have altered the character or appearance of the area relevant to the appeal site in any way. Thus, I find that the Council should have attached significant weight to the November 2015 appeal decision.
8. The UU submitted alongside the development proposal clearly overcomes the harm identified by the Inspector in November 2015 and the Council have not questioned this element of the proposal. That said, had the Council considered fully and attached sufficient weight to the November 2015 appeal decision, on the basis of the evidence before them, the application should clearly have been permitted. Thus, the appeal would have been avoidable.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense has been demonstrated and that a full award of costs is justified.

### **Costs Order**

10. 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 Maldon District Council shall pay to Stuart Davis Ltd, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Maldon 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.

*L Fleming*

INSPECTOR