

## Costs Decision

Hearing held on 10 November 2016

Site visit made on 10 November 2016

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> December 2016**

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### **Costs application in relation to Appeal Ref: APP/X1355/W/16/3148225 Land to the north of Castle Eden Brewery, Castle Eden, County Durham**

- 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 Dignity PLC for a full award of costs against Durham County Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for erection of new cremation facility comprising a crematorium building, new access road, car parking facilities, ancillary external areas including gardens and pond.
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### **Decision**

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

### **The submissions for Dignity PLC**

2. The appellant's application for costs and the Council's rebuttal had been submitted in writing in advance of the hearing. The written statements provide sufficient basis for a decision, and the parties were content with this and had nothing further to add verbally.
  3. The appellant's application is based on alleged unreasonable behaviour by the Council of a substantive kind. It is held that the Council had failed to adequately substantiate its reason for refusal, made contrary to officer recommendation, through any technical or empirical evidence. It had relied on a 'partial and superficial report' commissioned by an interested party, Castle Eden Golf Club (CEGC), in respect of the impact of the adjacent golf course on the proposed cremation facility.
  4. Specifically, the Council had not justified why it had not accepted the 80m safety margin as the appropriate industry standard. Rather, the Council had relied on unsubstantiated concerns, such as golf balls hitting and bouncing off hard-surfaced parts of the development, and on general advice, such as taken from a *Golf Digest* article.
  5. The Council had been inconsistent in refusing a proposal where no members of the public would gain access to areas within the 80m safety margin, whereas elsewhere there was housing located within this zone. The Council had not justified the greater risk applied to the safety of visitors to the crematorium compared to that of private occupiers of residential gardens.
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6. The Council had then not made its decision based upon the overall planning balance but had attached disproportionate weight to the single issue of the impact from the golf course on the safety of users of the crematorium.

### **The response by Durham County Council**

7. The Council had acted reasonably in substantiating its refusal having weighed up the evidence provided by both the appellant and CEGC and then arriving at the subjective planning judgement. This was that, on the basis of this evidence, the degree of risk relative to the potential consequences justified the decision to refuse planning permission.
8. The Council had not been unreasonable in taking account of the evidence provided on behalf of an interested party since the applicant had been given the opportunity to respond to this, which had also been considered. Attention had been given to the 80m safety margin but the Council had considered the residual safety risk beyond this area was not acceptable due to the potential serious consequences.
9. The Council has acknowledged the relatively limited area of hard standing within the 80m safety zone but nonetheless considered it reasonable to reach a common sense conclusion over bouncing golf balls as part of the overall risk of harm from miss-hit shots to people within the publicly-accessible parts of the proposal.
10. The housing close to the golf course had been permitted in the 1950s/1960s and so changing circumstances would have justified this proposal being treated on its own merits, since this was a different site and would provide greater risks due to its public rather than private use. It had also not been unreasonable to consider the *Golf Digest* article as this provided advice on the types of injury caused by golf balls. The Council had balanced the other considerations but it was reasonable to attach great weight to the issue of the safety of attendees in view of the location of the crematorium close to the golf course.

### **Reasons**

11. The 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.
12. The appellant's safety report, and that provided on behalf of CEGC, provide specialist and qualified advice in respect of golf course design. Both acknowledge the 80m safety zone as the accepted industry standard. It is noted that the appellant acknowledges the Council arrived at a judgement and is entitled to make a decision contrary to officer recommendation.
13. I do not consider it unreasonable for the Council not to have commissioned its own independent safety report. I am persuaded that the Council would have given appropriate consideration to both reports, taking into account any degree of partiality of both, and carried out a balanced judgement in respect of these and all other evidence.
14. I consider that in the balance it was reasonable for the Council to decide the weight to attach to the residual risk of golf balls straying beyond the 80m zone,

given the serious consequences it considered would arise. The housing already within the 80m safety area would not show the Council's decision to be inconsistent given the age of this existing development and the differing nature of the crematorium proposal, where larger groups of people would congregate.

15. The Council had made a balanced judgment on this proposal in which the greatest weight had been attached to the residual risk of harm outside the 80m safety zone. I do not consider that the Council had acted unreasonably in a substantive sense in the decision made.

### **Conclusion**

16. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Jonathan Price*

INSPECTOR