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# Costs Decisions 1

Site visit made on 29 November 2016

**by W Fabian BA Hons Dip Arch RIBA IHBC**

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

**Decision date: 06 January 2017**

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## **Costs application in relation to Appeal Ref: APP/M0933/W/16/3153222 Dalesgarth, Mascalles, Ulverston, Cumbria LA12 0TQ**

- 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 Marc Charnley for a full award of costs against South Lakeland District Council.
  - The appeal was against the refusal of planning permission for change of use of land to siting of lodges (caravans), parking, tarn, wildlife area, and package treatment plan (re-submission).
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### **Decision**

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

### **Reasons**

1. Irrespective of the outcome of the appeal, the Planning Practice Guidance advises at paragraph 27 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.
2. Paragraphs 46 – 49 of the Guidance have been referred to; the basis of the application for an award of costs is that the Council has acted unreasonably in refusing planning permission for the development. The proposal has followed two previous similar but larger schemes and the re-submission followed discussion with the planning officer as to how the scheme could be made acceptable, with the advice received each time being to reduce the size of the scheme. The appeal scheme has retained the same level of landscaping with a reduced number of units proposed.
3. The applicant considers that the Council has behaved unreasonably in failing to take professional advice in relation to the landscape assessment and has only sought arboricultural advice in terms of the predicted growth rate of screen planting.
4. However, it is evident from the submissions that the Council's decision was taken in response to the legitimate and sincerely held concerns of both the planning officer and third parties to the appeal, as to the impact of the proposal on the local landscape and these concerns were material considerations which the Council was entitled to take into account. Matters relating to subjective judgement, such as design and as in this case, the effect on landscape, rarely give rise to an award of costs. While the applicant submitted a professionally

- produced LVIA<sup>1</sup> to substantiate the design decisions reached, with reference to the development plan and the Cumbria Landscape Character Guidance, the Council reached its own reasoned analysis, as set out in its Statement, with reference to the same policies and guidance and reached a different conclusion.
5. Although I have disagreed with the Council and found the landscape impact of the proposal acceptable, the appeal turned mainly on the assessment of these considerations, which are a matter of judgement. As such I find that the Council has not acted unreasonably in respect of the reason for refusal. The Council's submissions in the appeal were thorough and well reasoned. They did not rely on vague, generalised or inaccurate assertions about the proposal's impact, unsupported by any objective analysis (as referred to at paragraph 049 of the Guidance).
  6. Given the parties' fundamental difference as to whether the nature and extent of the proposal was acceptable within this particular landscape context which is, ultimately, a matter for subjective judgment, there is little to demonstrate that the appeal could have been avoided or that unnecessary or wasted expense has resulted.
  7. As such the application for an award of costs is not justified and should be refused.

*Wenda Fabian*

Inspector

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<sup>1</sup> Landscape and Visual Impact Assessment