The Planning Inspectorate

# Costs Decision

Site visit made on 16 December 2016

**by R C Kirby BA(Hons) DipTP MRTPI**

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

**Decision date: 10 January 2017**

**Costs application in relation to Appeal Ref: APP/P1615/W/16/3157814**
**The Harrow, Kempley Road, Dymock, Gloucestershire GL18 2AH**

- 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 Mrs Christine Trigg for a full award of costs against Forest of Dean District Council.
- The appeal was against the refusal of planning permission for the erection of two dwellings, garages and turning areas.

## Decision

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

## Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may only 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.

3. The PPG makes it clear that awards against a local planning authority may be either procedural, relating to the appeal process, or substantive relating to the planning merits of the appeal.

4. Types of behaviour that may give rise to a procedural award against a local planning authority include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, and deliberately concealing relevant evidence at planning application stage or at subsequent appeal.

5. The applicant submits that the Council introduced a new reason for refusal in evidence; did not accept that it could not demonstrate a 5 year supply of deliverable housing sites, failed to undertake a balancing exercise in respect of the proposal and attached inappropriate weight to the emerging Forest of Dean District Council Allocations Plan Submission Draft, August 2015 (APSD).

6. The Council submit that the officer report considered the planning application in the round having regard to the merits of the case. It is not necessary to repeat the level of detail contained in such a report within a decision notice; however refusal reasons should be clear and unambiguous.

7. I found that the Council's reference to poor design did not relate to the dwellings themselves; indeed the Council raised no concern in this regard in evidence. I interpreted this comment on the design of the scheme in so far as

it related to the access to the site only, as opposed to other matters. Whilst the applicant interpreted this differently, I find that the Council did not introduce fresh evidence at a late stage or introduce a new reason for refusal. Unreasonable behaviour resulting in unnecessary expense has not been demonstrated in this regard.

8. The Council's position on its supply of housing land was not referred to within its officer report; however the Council accepted that it was unable to demonstrate such a supply at appeal stage. Although a specific balancing exercise was not undertaken as part of the officer report, I have no reason to doubt that such an exercise was undertaken as part of the Council's consideration of the planning application. Reference was made within evidence to such an exercise, and whilst the Council concluded differently to the applicant in terms of the benefits of the scheme, this does not demonstrate unreasonable behaviour.

9. The applicant is also concerned about the weight that the Council attached to the APSD. Whilst noting this concern, the Council as decision maker is entitled to apportion weight to an emerging document; the fact that the applicant disagrees with this is not grounds for costs to be awarded.

10. Types of behaviour that may give rise to a substantive award against a local planning authority include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions and refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

11. I note the applicant's concern that the Council made reference to Core Strategy policies within its statement and reference to supplementary planning guidance (SPG) which was not referred to in its decision notice. I interpreted this section of the statement as providing the policy context for the proposal. The reference to these policies and SPG in no way implied that there was conflict with each and every one of these policies or guidance. It was not necessary for the applicant to review all of these policies and SPG as part of her submissions. The Council made it clear within its evidence where conflict arose.

12. However, although reference was made within the Council's second reason for refusal to its Residential Design Guide, nowhere within its evidence did it refer to where that conflict arose in respect of the use of the access. The lack of reference resulted in the applicant's time in perusing this document being wasted. The Council acted unreasonably in not identifying the specific areas where it considered there was conflict.

13. The fact that the applicant does not agree with the Council's reasons for refusal is not an indication of unreasonable behaviour. Matters such as the impact of a scheme on the character and appearance of a conservation area and living conditions is subjective. What one person may consider harmful is not necessarily harmful to somebody else. Given the concerns raised by the

Council's heritage advisor and local residents it was entirely reasonable of the Council to apportion the necessary weight to the matters raised. Although I did not reach the same conclusion to the Council in respect of the main issues of the appeal proposal, I am satisfied that it substantiated its concerns in evidence, making reference to local and national planning policies.

14. Although I reached a different conclusion to the Council in respect of the appeal proposal, I am satisfied that given the harm that the Council identified to the conservation area, this matter could not have been addressed by suitably worded conditions. Furthermore, given the Council's concerns regarding the use of the access, it would be unlikely that landscaping and boundary treatment (which could be controlled by condition) would have addressed its concerns in respect of noise and disturbance.

15. During the course of the appeal the Council acknowledged that it was unable to identify a 5 year supply of deliverable housing sites. The applicant considers that the Council should have reviewed its decision as a result. I do not share this concern, particularly given that the Council found that harm to a designated heritage asset would result, in conflict with local and national planning policies.

16. The applicant is concerned that the Council has not provided clarification in respect of certain matters following its decision. Whilst I note the frustration of the applicant in this regard it seems that there has been a dialogue between the parties, and whilst not necessarily receiving the requested explanation or information does not demonstrate to me that the Council has acted unreasonably.

17. I therefore conclude that in light of my findings that unreasonable behaviour, resulting in unnecessary or wasted expense has not been demonstrated, other than in respect of the Council not substantiating its concern relating to conflict with its Residential Design Guide. This amounted to unreasonable behaviour on the Council's part and resulted in the applicant being put to unnecessary and wasted expense. In this regard, a partial award of costs is justified.

**Costs Order**

18. 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 the Forest of Dean District Council shall pay to Mrs C Trigg, the costs of the appeal proceedings limited to those costs incurred in respect of the review of the Council's Residential Design Guide, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

19. The applicant is now invited to submit to the Forest of Dean 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.

*R. C Kirby*

INSPECTOR