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## Costs Decision

Site visit made on 12 December 2016

**by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

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

**Decision date: 26<sup>th</sup> January 2017**

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### **Costs application in relation to Appeal Ref: APP/J1535/W/16/3158090 Field adjacent to Horse Shoe Farm, London Road, Harlow, Essex CM17 9LH**

- 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 Padfield (Hayleys) Ltd for a full award of costs against Epping Forest District Council.
  - The appeal was against the refusal of planning permission for a steel portal framed agricultural sprayer cover and chemical store lean-to off one end.
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### **Decision**

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

### **Reasons**

2. The national Planning Practice Guidance (PPG) advises in paragraphs 29 and 30 that, irrespective of the outcome of the appeal, 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 applicant submits that the Council has acted unreasonably with regards to paragraph 49 of the PPG and the substance of the matter under appeal on two main grounds. Firstly, that the Council failed to produce evidence to substantiate each reason for refusal and made vague, generalised or inaccurate assertions about a proposal's impact unsupported by any objective analysis.
  4. The Council's appeal statement, while referring to the effect of the building's size, provides little objective analysis about its impact on the character and appearance of the area or the living conditions of occupiers of nearby properties. No reference is made to adjacent features, such as existing landscaping and other agricultural/commercial buildings which influence the effect of development on its surroundings. Therefore, I agree that the Council has been unreasonable in failing to produce evidence to substantiate each reason for refusal with vague assertions unsupported by objective analysis.
  5. Secondly, the applicant contends that the Council did not review their case promptly following the lodging of an appeal, and was inconsistent in its decision making. The previous application (EPF/1818/15) with the same siting and dimensions to the appeal scheme was refused for the sole reason of insufficient evidence to justify why the building was necessary for the purposes of agriculture within that unit. There were no reasons for refusal based on the size of the development or its effect on the character and appearance of the area or the living conditions of occupiers of nearby properties. While I
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recognise that the previous application was dealt with under delegated authority and that Council members are not duty bound to follow the professional advice of their planning officers, there is a need for consistency in the handling of applications to ensure fairness.

6. The appeal scheme provided evidence of why the building was necessary and was presented to planning committee with a recommendation for approval. A last-minute letter from Natural England dated 9 March 2016 appeared to cast doubt on the size of the building and the application was refused. Having read the letter however, I do not consider that Natural England was objecting to the necessity of the proposed building, but was merely saying that its size was without a precedent as a solution to the issues of water quality. Whether or not a deferral was required in terms of the decision-making process, the applicant had provided sufficient evidence to justify the purpose of the building, and there was no reason to refuse permission on this basis. Therefore, I agree that the Council has been unreasonable in not reviewing their case promptly and being inconsistent in their decision making.
7. The Council has acted unreasonably on both grounds. The applicant has thus been faced with the unnecessary expense of lodging an appeal and contesting the Council's reasons for refusal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of 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 Epping Forest District Council shall pay to Padfield (Hayleys) Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Epping Forest 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.

*Tom Gilbert-Wooldridge*

INSPECTOR