

## Costs Decision

Site visit made on 20 December 2016

**by Graeme Robbie BA(Hons) BPI MRTPI**

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

**Decision date: 13 February 2017**

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### **Costs application in relation to Appeal Ref: APP/B3030/W/16/3156583 The Plough, Main Street, Coddington, Nottinghamshire NG24 2PN**

- 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 and Mrs D Burke for a full award of costs against Newark & Sherwood District Council.
  - The appeal was against the refusal of planning permission for the alteration of public house to form three first floor apartments, relocation of car park and erection of three dwellings.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Awards may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
3. The application was refused contrary to the advice of the Council's professional officers who had produced a written report analysing the effects of the proposal in respect of a number of matters, including the overall principle of residential development in Coddington, highways matters and the living conditions of occupiers of adjacent properties. Authorities are not bound to accept the recommendations of their officers, but the Guidance is clear that local planning authorities are at risk of an award of costs if, amongst other matters, they rely on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, they fail to produce evidence to substantiate each reason for refusal or they do not determine similar cases in a consistent manner.
4. The applicant's case relies largely on their claim that the Council did not determine similar proposals in a consistent manner; specifically that the refusal reasons set out in respect of the second proposal were inconsistent with those of the first<sup>1</sup>, and that an additional, "in principle" objection, was introduced with the refusal of the second proposal. Whilst the two proposals differ in the location of the relocated car park and the exact position and layout of the three new-build dwellings, I am satisfied that the general principle and quantum of development remains consistent and that the proposals are broadly similar.

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<sup>1</sup> Application ref: 15/02253/FUL and APP/B3030/W/16/3151592

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5. Whilst there are differences between the two schemes, the appellant contends that these reflected a desire to address the Council's previous refusal reasons. I do not find it unreasonable for an applicant to expect a degree of consistency in the assessment of an application's principle where that application follows a previously determined application and where the development plan and other material considerations remain consistent across the applications in question. It has not been argued in this case that the development plan, or other material considerations or circumstances, have changed in the intervening period and, by introducing an "in principle" objection to the proposal based, it seems, on a matter of local housing need that had not previously been a matter of dispute, I find that the Council have not determined similar cases in a consistent manner.
6. However, whilst that may be so, I am satisfied that the differences between the applications in terms of highways matters and the relationship between the new build dwellings and existing houses on Main Street are such that the Council were not unduly fettered in the determination of the second proposal by their decision in respect of the first proposal. The Council were free to exercise their judgement in reaching a conclusion on these matters and I agree that they could not have known the outcome of the appeal against refusal of the first scheme at that time.
7. However, in exercising judgement in the particular circumstances of a case, that judgement has to rely on more than vague, generalised or inaccurate assertions regarding a proposal's impact. In this instance I have not been provided with any substantive or compelling evidence that seeks to support the highway safety-related reason for refusal, nor have I been directed towards any guidance or policy content regarding separation distances between existing and proposed dwellings in respect of living conditions. Instead, the Council have relied on vague, generalised and inaccurate assertions regarding the impact of the proposal in the face of advice from its officers that these matters were acceptable.
8. I accept that in deciding not to contest the current appeal following due consideration of my colleague's decision in respect of the first scheme<sup>2</sup>, the Council acted promptly in confirming as much to the appellant. I accept, too, that in so doing there was little point in the Council submitting any further evidence to support a decision and refusal reasons that they no longer wished to defend. However, in relying on vague and generalised assertions regarding the impact of the proposal, and by introducing an "in principle" objection resulting in similar cases not being determined in a consistent manner, I am led to conclude that the Council have behaved unreasonably with regard to the substance of the appeal. The appellant should not have needed to deal with these reasons for refusal for a development that I have concluded should clearly be permitted, and has therefore incurred unnecessary expense in doing so.
9. For the reasons set out therefore, I conclude that the costs application should succeed and the application for an award of costs is allowed in the terms set out below.

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<sup>2</sup> APP/B3030/W/16/3151592

### **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 Newark & Sherwood District Council shall pay to Mr and Mrs D Burke, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Newark & Sherwood 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.

*Graeme Robbie*

INSPECTOR