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## Costs Decisions

Site visit made on 23 May 2017

**by Daniel Hartley BA Hons MTP MBA MRTPI**

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

**Decision date: 02 June 2017**

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### **Costs application in relation to Appeal Ref A: APP/A0665/W/17/3170295 Land adjacent to 19 School Lane, Childer Thornton, Ellesmere Port CH66 5PH**

- 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 Ian Lyons (Lyons Estates) for a full award of costs against Cheshire West & Chester Council.
  - The appeal was against the refusal of planning permission for approval of reserved matters following outline application 15/01810/OUT without complying with a condition attached to planning permission Ref 16/01376/REM dated 27 May 2016.
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### **Costs application in relation to Appeal Ref B: APP/A0665/W/17/3170301 Land adjacent to 19 School Lane, Childer Thornton, Ellesmere Port CH66 5PH**

- 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 Ian Lyons (Lyons Estates) for a full award of costs against Cheshire West & Chester Council.
  - The appeal was against the refusal of planning permission for approval of reserved matters following outline application 15/01810/OUT without complying with a condition attached to planning permission Ref 16/01376/REM dated 27 May 2016.
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## **Decision**

### Appeal Ref A

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

### Appeal Ref B

2. The application for a full award of costs is allowed in the terms set out below.

## **Reasons**

3. The Planning Practice Guidance (PPG) advises 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 expense in the appeal process.

### Appeal Ref A

4. I acknowledge that the planning committee report recommended approval of planning permission. However, the Planning Committee were entitled to make
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a decision which was contrary to the officer recommendation. That in itself does not amount to unreasonable behaviour.

5. I note that the appellant considers that the appeal development changes are "marginal" when compared to the extant planning permission for the erection of a dwelling on the site, but for the reasons outlined in the decision letter, I consider that material harm has been caused to the living conditions of the occupiers of the neighbouring residential property. I therefore conclude that the Council's decision was both reasonable and substantiated. Therefore, the appellant has not wasted time and expense in pursuing the appeal.

#### Appeal Ref B

6. As per the above appeal, the Planning Committee was entitled to make a decision which was contrary to the officer recommendation. That in itself does not amount to unreasonable behaviour. However, when compared to the extant planning permission for the erection of a dwelling on the site, the proposed dwelling would, in the main, be narrower and would be sited further away from neighbouring residential properties. Overall, the appeal proposal represents a relative improvement in terms of the impact of the dwelling upon the living conditions of the occupiers of surrounding residential properties.
7. In respect of this appeal the Council's main focus related to the erection of a porch/shelter on the side elevation of the proposed dwelling. However, I do not consider that the Council has reasonably substantiated why use of this door would result in significant disturbance issues for the occupiers of Oakley. In considering this matter, I do not consider that the Council reasonably took into account the fact that a door had already been approved on the side elevation of the house in terms of the extant planning permission. Furthermore, the Council has questioned the need for such a porch/shelter, but I do not consider that this was a relevant consideration. In addition, I do not consider that the Council has substantiated why the so called "upward overlooking" from the porch/shelter would actually result in occupiers of the proposed dwelling being able to look directly into the first floor rooms of Oakley.
8. In addition to the above, I am not satisfied that the Council has afforded appropriate weight to the extant planning permission as a material planning consideration. I conclude that the Council has not reasonably substantiated its reason for refusal and therefore the appellant has wasted time and expense in pursuing the appeal.

#### **Conclusion**

9. For the collective reasons outlined above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in respect of Appeal A, but has been demonstrated in respect of Appeal B. Therefore, the application for a full award of costs is justified in respect of Appeal B.

#### **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 Cheshire West & Chester Council shall pay to Mr I Lyons (Lyons Estates), the costs of the appeal proceedings described in Appeal Ref B of the heading of this

decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Cheshire West & Chester 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.

*Daniel Hartley*

INSPECTOR