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## Costs Decision

Site visit made on 27 March 2017

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 5 June 2017**

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### **Costs application in relation to Appeal Ref: APP/X1545/W/16/3164833 Sunnyside, Stoney Hills, Burnham on Crouch CM0 8QA**

- 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 Levins for a partial award of costs against Maldon District Council.
  - The appeal was against the refusal of planning permission for the demolition of existing garage and erection of 2 dwelling houses.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
  3. The Council's Decision Notice contains four reasons for refusal. The applicants contend that the Council has not provided evidence to demonstrate the harm that has been alleged for reasons of refusal (RR) 2, 3 and 4. RR2 stated that the proposal would result in unacceptable intensification of an unmade road which is narrow with no turning facilities. However, the submitted plan indicates that there would be adequate space within the site for vehicles to enter and leave in forward gear and the road is privately owned and privately maintained. The Highway Authority did not object to the proposal and no evidence was put forward by the Council to demonstrate that additional vehicle movements would have an adverse effect on highway safety. Consequently the Council's RR2 was not properly substantiated. Whilst the Council withdrew this reason for refusal at the appeal stage following the determination of an appeal nearby, the applicants were required to respond to the matter in their submission and this led to unnecessary and wasted expense in the appeal process.
  4. Turning to RR3, the applicants contend that the Council has no information to demonstrate that a protected species may be present, but the Council has acted on standing advice from Natural England and taking a precautionary approach I concluded that the proposal included insufficient information regarding the potential impact on protected species. For this reason the Council acted reasonably in refusing the application on this basis.
  5. With regard to RR4, the Council's concern was that the position of the access at the side of Sunnyside would lead to undue noise and disturbance for its
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occupants from vehicle movements and bin collections, but there would be sufficient space between the flank wall of Sunnyside for a landscaped buffer and appropriate boundary materials could be secured by condition. Furthermore, any noise associated with weekly or fortnightly refuse collections would be unlikely to cause significant disturbance to adjoining occupiers. The evidence put forward by the Council in relation to RR4 was therefore vague and generalised in nature.

6. Taking all of the above into account, although I consider that the Council did not act unreasonably in refusing the application due to a lack of ecological information, the second and fourth reasons for refusal relating to highway safety and living conditions were not properly substantiated, contrary to paragraph 49 of the Guidance. The Council's unreasonable behaviour in this respect led the applicants to incur unnecessary or wasted expense in the appeal process. A partial costs award relating to the costs incurred in defending arguments on these matters is therefore justified.

### **Costs Order**

7. 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 on that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Mr and Mrs Levins the costs of the appeal proceedings described in the heading of the decision limited to those costs incurred in defending arguments relating to highway safety and living conditions.
8. The applicants are now invited to submit to Maldon 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.

*Claire Victory*

INSPECTOR