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## Costs Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

**by David Troy BSc (Hons) MA MRTPI**

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

**Decision date: 19 June 2017**

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### **Costs application in relation to Appeal Ref: APP/A2280/W/17/3166401 Turkey Hall Farm, Malmaynes Hall Road, Upper Stoke, Rochester ME3 9SG**

- 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 AC Goatham and Son for award of costs against The Medway Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for change in use of land for the stationing and storage of 16 rural worker caravans and provision of associated hardstanding, drainage and landscaping.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may 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. The application for costs seeks a full award on substantive grounds<sup>1</sup>, with only alternative consideration if necessary to be given to a partial award.
3. The appellant stated that the Council was unreasonable and the refusal was unnecessary as the proposal complies with the development plan, national policy and there were other material considerations that the Council failed to take into account when reaching its decision. The appellant states that the Council's reasons for refusal are vague, generalised and make inaccurate assertions about the proposal's impact which are unsupported by any evidence and objective analysis. The appellant states that the Refusal Reason 1 (RR1) ran contrary to advice received from the Council's Environmental Health Officers and Agricultural Adviser, who raised no objections to the proposal.
4. In this case, in light of the fact that the submissions made at the application and appeal stage took place prior to the recent noise assessment undertaken by the appellant and submitted as late evidence before the hearing<sup>2</sup>, I consider that the RR1 was adequately substantiated by the Council in its officer report and appeal statement. The officer report and appeal statement demonstrates the Council's view as to how the proposal would affect the living conditions of

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<sup>1</sup> Planning Practice Guidance: Paragraph 049 Reference ID 16-049-20140306

<sup>2</sup> RBA Acoustics External Noise Assessment Prepared 12 April 2017

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the occupiers of the neighbouring properties, using the evidence submitted by the appellant and available at the time, the Council's observations, those of statutory consultees and third parties. As to whether the proposal would cause noise and disturbance in the absence of the noise assessment presented was a matter of planning judgement and of fact and degree based on the particular merits of the case and the evidence presented.

5. In light of my assessment of the evidence before me, I share the appellant's view that the Refusal Reason 2 (RR2) had not been adequately substantiated by the Council in terms of evidence. However, I note that the appellant did agree to facilitate only 4 persons per unit in the interest of moving forward the development scheme<sup>3</sup> and this formed the basis of the Council's case.
6. Therefore, whilst the Council could be judged to have failed in this respect, I consider the reasons for refusal and the officer's report provide sufficient clarity to substantiate the details of the development that were considered unacceptable in this instance. It also clearly states the policy of the Medway Local Plan 2003 (LP) and the paragraph contained in the National Planning Policy Framework (the Framework) that the proposal would be in conflict with.
7. I am also satisfied that the Council's review of alternative site options was not unreasonable given the concerns raised by the Council and local residents, even though the alternative siting of the proposal on the opposite side of Malmaynes Hall Road was ultimately discounted as a viable option.
8. The appellant argued that the Council gave inadequate regard to the presumption in favour of sustainable development under paragraph 14 of the Framework. For decision making, this means "approving development proposals that accords with the development plan without delay" (first bullet point) and "where the development plan is absent, silent or that the relevant policies are out of date, granting permission unless any adverse impacts would significantly and demonstrably outweigh the benefits of the proposals when assessed against the policies in the Framework taken as a whole" (second bullet point).
9. Whilst Policy BNE2 (Amenity Protection) in the LP, is somewhat dated, I consider that it is consistent with the Framework's core principle of a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17). For decision taking I do not consider that the development plan is absent, silent or that the relevant policies are out of date in this case. The Council judged that the proposal was contrary to the development plan. In any event, the officer report set out the benefits and adverse impacts of the appeal scheme as part of its assessment and the conclusion of the appeal statement sets out that any significant benefits for the mobile homes would be outweighed by the impacts of the proposal.
10. The appellant also considers the mobile homes subject to this appeal benefit from permitted development rights under the provisions of Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. This says that permitted development (PD) is *the use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2*. Paragraph A.2 provides the

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<sup>3</sup> Appellant's appeal statement para. 5.5

interpretation of Class A, setting out that the 'circumstances' mentioned are those specified in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites and Control of Development Act, 1960 (the Act).

11. The appellant, however, considers that inadequate regard has been given to this fall-back position as a material consideration. However, I note this fall-back position was acknowledged in the advice received from the Council's Agricultural Adviser in the Council's officer report and the Council's response to the Draft Statement of Common Ground, where they stated the retention of the unoccupied mobile homes does not fall within PD rights and that the potential for supplying units under PD rights is very different in terms of impact due in part to the infrastructure and the hardstandings associated with the proposal. Therefore, whilst the Council could be judged to have failed in this respect, I consider the Council's response provides sufficient clarity to substantiate its view on the fall-back position, even though it does not attribute what weight they gave to it as a material consideration.
12. In addition, the appellant argued that the Council failed to fully take into account the appeal decision at Howt Green Farm<sup>4</sup> and the Council's decisions on similar developments by the appellant for change of use of land for the stationing and storage of rural worker caravans at Meresborough Nursery and Flanders Farm in the area<sup>5</sup>. This appeal decision and Council decisions were acknowledged in the Council officer's report and the Council response to this costs application was such that I am satisfied that they had been taken into consideration. However, it is important that each proposal should be determined on its own merits including its particular location.
13. I accept that the Council did not agree the Planning Obligation in a timely manner and this does amount to unreasonable behaviour. However, the Council did contribute to the discussions on a signed Unilateral Undertaking (UU) presented at the hearing. Therefore, despite the timing, this has not caused the appellant to incur unnecessary or wasted expense in the appeal process as this work on the UU would have had to been undertaken.
14. It is seen from my decision that I disagree with the approach taken by the Council. However, prior to the recent noise assessment, the Council was entitled to form its own views about the impacts of the development having regard to all the evidence and other matters raised. Accordingly, I do not consider that unreasonable judgement has been applied and I am satisfied that the Council's written and oral evidence has substantiated its decision at the time and cannot agree that the Council acted unreasonably in this case.
15. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified.

*David Troy*

INSPECTOR

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<sup>4</sup> APP/V2255/W/15/3133538

<sup>5</sup> MC/15/3086 & MC/14/3243