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## Costs Decision

Site visit made on 23 May 2017

**by G J Fort BA PGDip LLM MCD MRTPI**

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

**Decision date: 22 June 2017**

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### **Costs application in relation to Appeal Ref: APP/V5570/W/17/3169770 Parkhurst Court, Warlters Road, Islington, London N7 0SD**

- 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 Leon Faust (Ableworld Ltd) for a full award of costs against the Council of the London Borough of Islington.
  - The appeal was against the refusal of planning permission for a development described as "The proposal is to remove the garages apart from one and one parking bay (existing garage removed) and to build a new mews made up of residential accommodation. The development will consist of seven houses: three courtyard houses, a semi-detached pair of houses, and two family houses bridging over the entrance to the mews, all with gardens. These would include sustainable features such as 'green roofs'."
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### **Decision**

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

### **Reasons**

2. The Government's 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.
3. In this case the applicant alleges that the Council acted unreasonably in preventing or delaying development that should have clearly been permitted having regard to the development plan, national planning policy and other material considerations.
4. The Officer Report in respect of the planning application that led to the appeal recommended its approval subject to a planning obligation securing a financial contribution towards the provision of affordable housing. At the time of this report, and the committee meeting at which it was considered, the Written Ministerial Statement (WMS) of November 2014<sup>1</sup>, was subject to a High Court judgement<sup>2</sup> and declaration Order, which established that its policies were not to be treated as material considerations in planning decisions.

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<sup>1</sup> Which states, amongst other things, that "Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less...affordable housing...contributions should not be sought"

<sup>2</sup> *West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government* CO/76/2015 [2015] EWHC 2222 (Admin)

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5. Following this, the Secretary of State successfully challenged the High Court's judgement in the Court of Appeal, the judgement<sup>3</sup> of which was issued on 11 May 2016. Consequently, the policies expressed in the WMS are once again material considerations in the determination of planning applications.
6. I note that in July 2016, following the High Court judgement in respect of the WMS, the applicant requested the Council to reconsider the required affordable housing contribution. The Council, however, issued a decision notice in respect of the scheme on 6 January 2017 with two reasons for refusal including one relating to the lack of a legal mechanism to secure an affordable housing contribution from the development.
7. The Court of Appeal's judgement established the materiality of the WMS for planning purposes. However, neither the judgement itself, nor the policies expressed in the WMS supplant the statutory status and primacy of the development plan as the basis for making planning decisions established in section 70(2) of the Town and Country Planning Act 1990, and section 38(6) of the Planning and Compulsory Purchase Act 2004.
8. The weight of material considerations is always a matter for the decision-taker, and in this instance the Council did not act unreasonably in finding that the requirements of its development plan were not outweighed by the national planning policy as expressed in the WMS. Moreover, given the weight of evidence provided to me in support of the development plan approach in this regard, this is a conclusion at which I have also arrived in my decision letter concerning the appeal.
9. Consequently, it has not been established, either at application or appeal stage that a planning obligation to secure affordable housing would be unlawful in terms of the tests set out in the Community Infrastructure Levy Regulations 2010, or paragraph 204 of the National Planning Policy Framework.
10. Therefore for the reasons given above, it has not been demonstrated that the Council prevented or delayed development that should have clearly been permitted having regard to the development plan, national planning policy and other material considerations.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and as a result this application for costs fails.

*G J Fort*

INSPECTOR

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<sup>3</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441)