

## Costs Decisions

Inquiry held on 14 to 17 March 2017 and 3 May 2017

Site visit made on 13 and 16 March 2017 and 2 May 2017

**by J Dowling BA(Hons) MPhil MRTPI**

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

**Decision date: 26 July 2017**

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### **Costs application in relation to Appeal Ref: APP/H1033/W/16/3155484 Land off Brown Edge Close, Buxton, Derbyshire SK17 7AF**

#### **(Cost application A)**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Ms Markella Mikkelsen & Mr Glenn Armstrong (Glenmark Trading Ltd) for a partial award of costs against High Peak Borough Council.
  - The inquiry was in connection with an appeal against the refusal of outline planning permission for residential development including demolition of 70 and 72 Brown Edge Close.
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### **Costs application in relation to Appeal Ref: APP/H1033/W/16/3155484 Land off Brown Edge Close, Buxton, Derbyshire SK17 7AF**

#### **(Cost application B)**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by High Peak Borough Council for a partial award of costs against Ms Markella Mikkelsen & Mr Glenn Armstrong (Glenmark Trading Ltd).
  - The inquiry was in connection with an appeal against the refusal of outline planning permission for residential development including demolition of 70 and 72 Brown Edge Close.
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## **Decision**

1. Cost applications A and B are refused in the terms set out below.

## **Reasons**

2. National Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. Claims can be procedural – relating to process; or substantive – relating to the issues arising from the merits of the appeal.
  3. The Guidance further sets out that the parties in planning appeals and other planning proceedings should meet their own expenses. Additionally the Guidance is clear that an application for costs will need to demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
  4. Both the appellant and the Council made their applications for an award of costs in writing and their responses were given at the close of the Inquiry on the 3 May 2017.
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5. Cost application A is made by the appellants on a procedural basis. They consider that the Council acted unreasonably by introducing late evidence that advocated that the site was a valued landscape for the purposes of paragraph 109 of the National Planning Policy Framework (the Framework). Furthermore, as the Council did not co-operate to enable the production of a Statement of Common Ground (SoCG) in a timely manner additional work on this matter had to be undertaken. The appellant considers that this amounts to the introduction of a new reason for refusal and fresh and substantial evidence at a late stage which necessitated extra expense for preparatory work that would not otherwise have been required.
6. Cost application B is made by the Council on a procedural basis as they consider that the appellant acted unreasonably in not providing information regarding the appellants' company being dissolved and the effect that this would have on the appeal process.

*Cost application A*

7. I accept that neither the original committee report, the Council's decision notice nor the Council's Statement of Case made specific reference paragraph 109 of the Framework or that the Council considered that the appeal site to be a valued landscape. Furthermore, I recognise that the appellant's draft SoCG specifically referred to paragraph 109 as not being a disputed matter<sup>1</sup>.
8. However, the effect on the character and appearance of the countryside formed the main reason for refusal. As a result at an appeal I would expect evidence submitted by either party to provide a more detailed explanation as to why, in the case of the Council, they had refused planning permission or, in the case of an appellant, why they disagreed with the Council's decision. This could include a more detailed analysis of a proposals compliance with the Framework than would have been included in the original planning documents or been undertaken in the drafting of a committee report.
9. For this appeal both parties appointed expert witnesses to produce landscape and visual evidence. Both produced detailed proofs of evidence which expanded their cases and which amongst other things, in both cases, made more detailed reference to various sections of the Framework including concluding on paragraph 109<sup>2</sup>. As a result I do not consider that the Council have acted unreasonably in expanding their case to consider this matter in more detail.
10. Consequently, I consider that even if an agreed SoCG had been available to the appellant while they were drafting their proofs they would have still have had to undertake the work to rebut the Council's arguments on paragraph 109. Albeit that I recognise that this may have been contained within the appellants Proof of Evidence rather than a rebuttal. Therefore, I do not consider that the appellant had to undertake extra preparatory work that would not have otherwise arisen.
11. The submission of a rebuttal proof was the choice of the appellant. Whilst I acknowledge that it was helpful to the Inquiry to have this information in

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<sup>1</sup> Paragraph 5.7 of the Draft Statement of Common Ground  
Paragraph 2.8 Mr Jonathan Berry's Landscape Evidence and Paragraphs 3.5.4 and 5.1.6 of Mr Bewsick's Proof of Evidence

advance, I consider equally the matter could have be dealt with through giving evidence and cross examination at the Inquiry.

12. In conclusion I do not consider that the Council acted unreasonably with regards to this matter and that the appellant's costs in dealing with this issue were not unnecessarily incurred. For this reason, and having regard to all other matters raised an award of costs for cost application A is not justified.

*Cost application B*

13. Having discovered that the appellants' company had been dissolved the Council correctly informed the Planning Inspectorate (PINS). As this raised questions as to whether the Inquiry could be held it was then a procedural matter for PINS and not the Council to resolve.
14. I agree that it would have been courteous for the appellant at an early stage to advise both PINS and the Council about the issue and to explain how they were working to resolve it, including any advice that they had received regarding the implications for the appeal. However, I do not consider that the Council, beyond informing PINS, needed to have done any further work on the matter or incurred any additional expense in seeking legal advice as it was a matter for PINS to seek advice and guidance to determine whether the appeal would need to be vacated or abandoned.
15. In conclusion I consider that the Council did not have to undertake the work that they did and for this reason and having regard to all other matters raised I conclude that an award of costs for cost application B is not justified.

*Jo Dowling*

INSPECTOR