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## Costs Decision

Hearing Held on 19 July 2017

Site visit made on 19 July 2017

**by Nick Palmer BA (Hons) BPI MRTPI**

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

**Decision date: 17 August 2017**

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### **Costs application in relation to Appeal Ref: APP/M1005/W/17/3167093 Amber Valley Rugby Club, Lower Somercotes Road, Somercotes, Derbyshire**

- 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 Carter Construction Ltd for a full award of costs against Amber Valley Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for residential development for up to 200 dwellings including landscaping, open space and storm water balancing.
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### **Decision**

1. The application is refused.

### **The submissions for Carter Construction Ltd**

2. The applicants state that the reason for refusal given by the Council is unclear and imprecise, is not supported by any evidence and does not make reference to any development plan policy. Furthermore it is alleged that the Council did not provide any further clarification of its reason after the decision despite being asked to do so and it did not do this in connection with the appeal.
3. The applicants claim that no evidence other than hearsay and supposition had been presented by local residents to challenge the technical evidence that had been presented and reviewed by the Council's advisors. Furthermore the reason for refusal was a matter that could have been dealt with by conditions. Finally the applicants are concerned that the Council did not contest its reason for refusal.

### **The response by Amber Valley Borough Council**

4. The Council states in response that its decision to refuse permission was based on views that had been expressed by its consultant. The Council has agreed matters of common ground with the applicant and has signed a Statement of Common Ground and participated in the appeal process albeit not defending its refusal of permission. The Council considers that its decision not to contest the appeal was entirely reasonable in terms of avoiding unnecessary expense on the part of the applicant. The Council also points out that the relocation of the rugby club has not been unreasonably delayed because permission has been granted for a new facility.

## Reasons

5. The Planning Practice Guidance 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.
6. In making its decision on the planning application, the Council's Planning Board would have considered the comments expressed by its consultant (LQM) taken as a whole. While LQM generally endorsed the scheme of investigation undertaken and its findings, reservations were expressed about some detailed aspects of the work that had been undertaken and concern was expressed about the viability of the proposed development. A significant amount of further investigatory work was identified by the applicant's consultant as being necessary. This further work could potentially reveal a need for remedial or mitigation works that would not be financially viable or alternatively the development could be found to be unviable on grounds of risk.
7. For these reasons I have found in my decision on the appeal that the imposition of conditions would not be a reasonable option. On this basis the Council's decision on the application was reasonable, taking into account the advice it had obtained.
8. Its reason for refusal as given did not specify the nature of further information that was required and was therefore vague and imprecise. Neither did the reason refer to any relevant policy. The applicants say that the Council did not respond to requests for clarification of this reason. I find these aspects of the decision making process unreasonable but it is nevertheless the case that the applicant was aware of the discussion at the Planning Board meeting that led to its decision and therefore the nature of the further information that was considered to be lacking. The Council did confirm in correspondence that it would not be contesting the appeal but that the Planning Board remained dissatisfied with the contamination issue.
9. Expert evidence was presented by the local resident's action group and it was still necessary for the applicants to defend their case in respect of ground investigations in order to address that opposing case. The applicants have not claimed that the Council's behaviour led to them unnecessarily presenting evidence. This would have been necessary in any event. For these reasons although the Council acted unreasonably this did not cause the applicants to incur specific unnecessary or wasted expense.
10. I have found that the Council's decision on the planning application was justified. Its subsequent decision not to contest the appeal was however unreasonable because of the concerns that were included in LQM's response. I do not find however that this unreasonable behaviour resulted in unnecessary or wasted expense on the part of the applicant for the reasons given above.
11. For the reasons given I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

*Nick Palmer*

INSPECTOR