



## Costs Decision

Site visit made on 6 February 2018

**by D R Cullingford BA MPhil MRTPI**

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

**Decision date: 13 April 2018**

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### **Costs application in relation to Appeal Ref: APP/M0933/W/17/3186066 Land adjacent to Daisy Hill Cottage, Great Urswick, Ulverston, Cumbria, LA12 0ST**

- 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 on behalf of Mr and Mrs S Swarbrick for a full award of costs against the South Lakeland District Council.
  - The appeal was against a refusal to grant planning permission for development described as the 'erection of new self-build dwelling and alterations of vehicular access'.
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### **Reasons**

1. The Planning Practice Guidance reaffirms that, irrespective of the outcome of the appeal, costs may only 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.
  2. I need not recite everything in the written submissions. However, in essence this claim alleges that the Council have behaved unreasonably in showing members out-of-date photographs of the site in an untidy condition after the appellant had spoken: by referring to the protected sycamore trees as being 'lost' and by citing superseded policy C9 in the third reason for refusal rather than 'saved' policy C11: by introducing a new issue of 'visibility' in the 'highway' reason for refusal since this was not a reason for rejecting a previous proposal in respect of which the current scheme was intended to be a resubmission: and, in failing to remove or redact objections claimed to be libellous.
  3. The Council explain that members were shown photographs of the site taken at different dates and that many of them visited the site in the week before the committee meeting; of course, they also had the benefit of the Planning Officer's comprehensive report. No evidence is adduced to show that those photographs misrepresented the condition of the site at the time they were taken. Nor is anything referred to at the committee meeting, in the Planning Officer's report or in the reasons for refusal to show that the determination of the application was unduly influenced by irrelevant or out-of-date information. On the contrary, the report carefully addresses the planning issues before the committee and the decision properly follows the recommendation.
  4. As for the protected trees, their presence would be 'lost' from the roadside by their removal up the bank and somewhere behind the proposed development; the wording of the third reasons for refusal is thus correct. And, although superseded policy C9 was cited rather than 'saved' policy C11, all parties to the appeal process are expected to act in a reasonable manner and with a degree of common sense.
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In my view, it is not reasonable for a professional planning consultant to claim that such an error might cause any lasting confusion, particularly as any momentary doubt could have been easily assuaged by a simple phone call.

5. I explain in my decision letter why the issue of 'visibility' is warranted in the context of this appeal; the access arrangements currently proposed do not replicate the access arrangements previously intended, so that the appeal scheme is not a straightforward resubmission of the previously refused proposal.
6. I find the complaints about the objections from local residents a 'protest too much'. In my reading, both supporters and objectors make submissions that are fairly typical of those made in the context of many appeals. Most, especially the objectors, ground their objections on proper planning considerations and on facts that they felt pertinent to the case. There may be some inaccuracies, but I found no submission to be completely without foundation and none that I could classify as obviously libellous. In the absence of explicit evidence to the contrary, I consider that the repeated requests to the Council to redact or remove unspecified objections from local residents to be wholly misplaced. The Council provide guidance on what is appropriate in the context of commenting on an application and, in the absence of evidence, might reasonably expect that guidance to be generally followed. In this case, as I indicate in my decision letter, the boot is more obviously on the other foot.
7. In those circumstances, I find that unreasonable behaviour resulting in unnecessary expense, as described in the Guidance, has not been demonstrated.

### **Decision**

8. This application for an award of costs is refused.

*David Cullingford*  
INSPECTOR