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## Costs Decision

Site visit made on 6 August 2019

**by Rajeevan Satheesan BSc PGCert MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> September 2019**

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### **Costs application in relation to Appeal Ref: APP/W3520/W/19/3227159 Land off Postmill Lane, Fressingfield, Suffolk**

- 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 Peter Davidson on behalf of C.E. Davidson Ltd for a full award of costs against Mid Suffolk District Council.
  - The appeal was against the refusal of planning permission for outline planning application for new residential development and associated new roads, infrastructure and open space.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) advises 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 expense in the appeal process.
3. The applicant states that the Council behaved unreasonably both during the determination of the application and the appeal process, and that the unreasonable behaviour falls into six categories. These can be summarised as follows:
  - 1) Failure to communicate with the applicant in a positive and proactive manner, thereby denying the applicant the opportunity to resolve matters raised;
  - 2) Failure to respond to, or recognise, the changing situation with regards to cumulative impacts, thereby necessitating recourse to planning appeal following refusal;
  - 3) Failure to provide clear and precise reasons for refusal, thereby creating additional work in the preparation of the appeal;
  - 4) Failure to provide full documentation in support of the Council's Statement of Case;
  - 5) Failure to properly consider, understand and apply the relevant test in recent case law which the Council then sought to rely on in refuting the appeal, resulting in significant additional work for the appellant; and

- 6) Proposing conditions which are, variously, unnecessary, imprecise and unenforceable, and the purpose of which appears to be a further attempt to frustrate delivery of new homes at the site.
4. With regards to the concerns raised regarding the lack of communication and engagement during the application, together with the extended length of time taken to determine the application, whilst this must have caused the applicant some concern, I find nothing to suggest that a decision was not reached on the basis of the merits of the proposal. As a planning application, it was before the Council to assess the likely effect of the proposal on flood risk and highway safety and to engage with local residents on such a major planning application. Whilst I disagree with the Council's conclusions on these matters, the Council took account of the relevant local and national planning policies, and objections from local residents. Therefore, although it is unfortunate the applicant appears not to have been involved in local meetings, the refusal on the grounds of highways safety and flooding is not unsubstantiated.
5. The applicant expresses concerns that the heritage issue was not raised either during the pre-application discussion or during the application. Any pre-application advice given before an application is made is given in good faith, without prejudice and cannot pre-determine the outcome of any subsequent application, which must take account of all material factors, which includes any comments raised during the course of application. The Council highlight that the Heritage and Design Officer's comments regarding the planning application was publicly available on their website. As such, the information would have been readily available to the applicant, if they wished to address these concerns. I therefore have no basis to conclude that this has resulted in unreasonable behaviour on the part of the Council.
6. Whilst I appreciate that the outcome of the application will have been a disappointment to the applicant, the Local Planning Authority were not unreasonable in coming to that decision, and indeed following consideration of the application on its merits alone, I have concurred with the Council's final decision to refuse planning permission. I also find no substantive evidence that the applicant incurred any additional expense as a result of this delay, which was made on the basis of refusal of permission and not non-determination.
7. The applicant also expresses concerns that the Council failed to respond to, the changing situation with regards to cumulative impacts of the proposal together with other planning applications which were coming forward in the village at the same time. In particular, the applicant highlights Suffolk County Council's (SCC) Highways comments referring to the cumulative impacts of the development. Although the Committee Report considers the cumulative effects of the proposal in combination with other schemes coming forward at the same time, in accordance with the requirement of the National Planning Policy Framework, I find there is no reason to suggest that the final decision was not made on the individual merits of the scheme. Indeed, there is no mention of the cumulative effect of the proposal within the Councils decision notice. Furthermore, given that the two other applications within the village which were being considered at the same time as the current proposal were refused, and were not subsequently appealed<sup>1</sup>, the Council have confirmed<sup>2</sup> that "the

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<sup>1</sup> Council Refs: 1449/17 and 1432/17.

<sup>2</sup> Paragraph 2.8 of the Council's statement of case.

- cumulative impact of these proposals need not be considered by the Inspector”.
8. With regards to the applicant’s third claim, the reasons for the refusal set out in the decision notice are precise, specific and relevant to the application. Therefore, the Council was not unreasonable in reaching their decision. Indeed, following consideration of the appeal on its merits alone, I have concurred with the Council’s decision to refuse planning permission for the proposal.
  9. The applicant also raised concerns that the Council have failed to provide documentation in support of their Statement of Case and refer the Heritage Teams statement of case but have not submitted this with their appeal documents. However, the Council have confirmed that whilst they had originally intended to submit this document it was later considered unnecessary as the Council’s Statement already addressed this reason for refusal.
  10. The applicant also refers to Appendix 8 of the Council’s statement, which was also not submitted, which relates to minutes of the meeting between the case officer, residents and Anglian Water. The Council have subsequently provided the minutes for this minute in their rebuttal to the costs claim, and states that the minutes for the meeting simply demonstrate that this meeting with Anglian Water occurred. The Council highlight that all the necessary information to understand the drainage issue had been made clear to the applicant prior to the appeal. In particular the committee report provides coverage of this issue and the Council also confirm that the applicant’s agent attended the committee which included a visual presentation of the foul drainage system in Fressingfield based on the description of the issue by Anglian Water.
  11. As such, whilst it is unfortunate that the applicant was not party to this meeting, and that the minutes of the meeting were not made available to the them initially, the minutes of the meeting do not provide any new information, and in this respect the applicant has not been prejudiced by this omission. Therefore, I do not consider that the missing documents referred to has resulted in unreasonable behaviour on the part of the Council.
  12. The applicant’s fifth claim considers that the Council failed to properly consider, understand and apply the decision in Wavendon<sup>3</sup>, in so far as the Council referred to this judgement and considers that the majority of policies that sit at the heart of this appeal are not out of date. The applicant has carried out their own assessment of the relevant policies and considers that the ‘basket’ of policies most important for determining the application are out of date. Whilst the Council’s assessment of this judgement differs from that of the the applicant, there is no reason before me which suggests that the Council has behaved unreasonably. Simply that the Council judgement on this matter differs from the applicants.
  13. Similarly, it is not considered that the Council’s suggested conditions amount to unreasonable behaviour. As part of the appeal process, both main parties are able to suggest conditions which they consider would mitigate the impacts of the proposal. It is for the Inspector to consider each of the recommended conditions against the advice on the use of conditions in the PPG.

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<sup>3</sup> Wavendon Properties v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin)

14. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Rajeevan Satheesan*

INSPECTOR