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## Costs Decision

Site visit made on 19 June 2019

**by E Brownless BA (Hons) Solicitor (non-practising)**

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

**Decision date: 14 October 2019**

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### **Costs application in relation to Appeal Ref: APP/J3530/W/19/3223485 Oak Tree Cottage, Whitehouse Farm Road, Hasketon IP13 6JP**

- 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 & Mrs D Watts for a full award of costs against Suffolk Coastal District Council.
  - The appeal was against the refusal of planning permission for the erection of a replacement dwelling and outbuilding following the demolition of existing outbuildings and part demolition of existing dwelling to be retained as a personal yoga studio, with associated parking, landscaping and boundary treatments.
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### **Decision**

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

### **Reasons**

2. The 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. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters including preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Other substantive matters include acting contrary to, or not following, well-established case law. The application for costs broadly relates to these matters listed as examples.
4. I have concluded that the proposal would be contrary to development plan policy concerning the spatial strategy of the district, in particular, the provisions of Policies SP19, SP29 and DM3 of the Suffolk Coastal District Local Plan Core Strategy & Development Management Policies (2013) and Policy SSP2 of the Suffolk Coastal District Local Plan Site Allocations and Area Specific Policies Development Plan Document (2017). However, notwithstanding the conflict with the development plan, there exists a valid fall-back position as a consequence of the extant planning permission<sup>1</sup>, which the Council refer to within the Case Officer Report. It is not clear from the report whether the Council considered this to be a material consideration, and if so, what weight, if any, they attributed to it when reaching their decision.

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<sup>1</sup> DC/17/4847/FUL

5. However, in considering the appeal I have concluded that I attribute significant weight to the fallback position as a material planning consideration. I have reached this finding based upon the evidence available to me at the time of this appeal, having particular regard to the implementation of the extant planning permission.
6. Whilst the Council's position on this matter is not clear from the evidence before me, I note the comments of Counsel, instructed on behalf of the applicant, in his opinion dated 23 October 2018, that the 'prospects of success would be improved if the approved development were to be implemented, as I am instructed will soon take place'. To my mind, I find it reasonable to conclude that the approved development had not commenced at the time the Council made its original decision and therefore the weight to be attributed to the fallback position would have been reduced in significance.
7. Therefore, albeit my overall conclusion differs from that of the Council, the circumstances in existence at the time of the Council's original decision and at the point of my consideration of this appeal are different. In reaching my conclusion, the situation with the fallback position has led me to conclude that a decision otherwise than in accordance with the development plan is appropriate in this instance. To my mind, this is not sufficient to show that the Council acted unreasonably by failing to have proper regard to the existence of the fallback position or relevant caselaw<sup>2</sup> on the subject. Similarly, at the time the Council made its decision it considered that the harm caused by the proposal as a consequence of the conflict with the spatial strategy justified the refusal of planning permission. As such, I do not consider that the Council behaved unreasonably in this regard.
8. Whilst I appreciate that the outcome of the application will have been a disappointment to the appellants, the Council were not unreasonable in coming to their decision and thus I do not find that the appeal could have been avoided.
9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

*E Brownless*

INSPECTOR

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<sup>2</sup> Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities & Local Government [2009] EWCA (Civ) 333 and Gambone v Secretary of State for Communities and Local Government [2014] EWHC 952 (Admin)