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## Costs Decision

Site visit made on 13 November 2019

**by Andrew Smith BA (Hons) MA MRTPI**

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

**Decision date: 16 December 2019**

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### **Costs application in relation to Appeal Ref: APP/C1570/W/19/3235172 Moorlea, Bartholomew Green Lane, Bartholomew Green, Felsted CM3 1QG**

- 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 Dobbs on behalf of DBS Contracting Ltd for a partial award of costs against Uttlesford District Council.
  - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of a pair of semi-detached dwellings with new vehicular access.
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### **Decision**

1. The application is refused.

### **Reasons**

2. Planning Practice Guidance 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 considers that the Council acted unreasonably by introducing an additional reason for refusal at appeal stage following the confirmation of a Tree Preservation Order (TPO). This, the applicant considers, has led to unnecessary expense being incurred in having to respond.
4. The TPO was confirmed after the date planning permission was refused by the Council and the planning appeal has been determined based on these current circumstances. Nevertheless, from the evidence before me, the Council, in the process of determining the original planning application, made no reference to the tree that is now protected. I consider that the Council should have highlighted their concerns at application stage, regardless of whether or not the tree was protected at that time. Indeed, the actual impact of the development upon this tree and its contribution to the area has not changed as a result of the TPO being confirmed. The Council introduced an entirely new and fresh reason for refusing planning permission at appeal stage, which, in this case, represents unreasonable behaviour.
5. Nevertheless, as set out in the Planning Practice Guidance, costs should only be awarded where unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. As referenced by the applicant, it is the case here that an interested party to the appeal submitted detailed evidence with respect to the confirmed TPO. It was my duty, when determining the planning appeal, to give account to all matters raised by interested parties. Therefore, even had the Council not chosen to

introduce an additional reason for refusal, it would have been in the applicant's interests to read and respond to the points raised by the interested party on this matter. Indeed, the applicant has addressed third party representations in their final comments.

6. I also note that no technical report, or similar, has been carried out in the interests of refuting the Council's additional refusal reason. The applicant's final comments instead contain only a short extent of written text referring to the tree in question and to the implications of the TPO having been made.
7. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Having had regard to all other matters raised, an award of costs is therefore not justified.

*Andrew Smith*

INSPECTOR