



## Costs Decisions

Hearing Held on 5 November 2019

Site visit made on 5 November 2019

**by Graeme Robbie BA(Hons) BPI MRTPI**

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

**Decision date: 3 March 2020**

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### **Appeal A**

**Costs application in relation to Appeal Ref: APP/R0660/W/18/3218817  
51 Main Road, Goostrey, Crewe CW4 8LH**

- 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 Henderson (Henderson Homes Ltd) for a full award of costs against Cheshire East Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the construction of a single dwelling house.
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### **Appeal B**

**Costs application in relation to Appeal Ref: APP/R0660/W/18/3219327  
51 Main Road, Goostrey, Crewe CW4 8LH**

- 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 Henderson (Henderson Homes Ltd) for a full award of costs against Cheshire East Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the construction of one detached and two semi-detached houses.
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## **Decisions**

1. The application for an award of costs in relation to Appeal A is refused.
2. The application for an award of costs in relation to Appeal B is refused.

## **Reasons**

3. A single application for an award of costs against Cheshire East Council is made in relation to both appeals, the details of which are set out in the banner heading above. Planning Policy Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. Applications for an award of costs against a local planning authority may be substantive, relating to the planning merits of the appeal, or procedural, relating to the appeal process. The appellant's claim is made on both substantive and procedural grounds in the form set out in the costs application. I will deal with each of the grounds broadly in the order in which the appellant has set them out in the application.
5. Informal advice given prior to the submission of an application is given without prejudice to, and cannot pre-determine the outcome of, a subsequent application, and must take account of all material factors. In this instance, the

timing of the pre-application advice and subsequent submission of the two cases which are now before me, combined unfortunately with two other appeal schemes<sup>1</sup> (one, adjoining the current appeal site and the other including land which comprises the current appeal sites). Furthermore, the process by which that appeal was to be determined was subject to change, thereby extending its running time.

6. It may well have been the case that the Council gave indications that a proposal for a single dwelling would be looked upon favourably. However, it is clear<sup>2</sup> that the 'invitation' to submit an application for a single dwelling was given 'on balance' and that it was also given with the usual caveats regarding pre-application advice. In any event, circumstances continued to move forward with the evolving timeline of the 6-house<sup>3</sup> scheme. Thus, I do not consider it unreasonable for either party, although principally in this instance, the Council, to keep their house in order with regard to consistency with concurrent applications and appeal proceedings for fear of undermining the legitimacy of their position in respect of one or other. I am also inclined towards the Council's interpretation of matters in seeking to assist the appellant and keep their options open as much as the Council's in terms of holding off making a decision
7. With regard to appeal B, no evidence has been submitted to show that that proposal was submitted in response to officer advice, however caveated. Although the Council makes reference to certain considerations which may have justified a positive recommendation<sup>4</sup>, that advice post-dates appeal B, the nature of which does not reflect the advice given in any event.
8. With regard to consistency of decision making, both main parties refer throughout their submissions to a number of proposals and appeal decisions which support their respective points of view. The matter of consistency is also not necessarily assisted by the terminology used in consultation responses advising that additional impact of the proposal would be 'relatively minor'. Whilst it may be relatively minor in technical terms, I have concluded that both individually and cumulatively the proposals would fail to ensure the efficient operation of the radio-telescopes at Jodrell Bank Observatory (JBO). Moreover, the relatively recent appeal decisions<sup>1</sup> in the immediate vicinity of the appeal site are also material considerations to which I have given significant weight.
9. Thus, in relation to both the specific example cited by the appellant in the costs application, and more generally in respect of the cases cited by the respective parties in their appeal submissions, I am satisfied that the Council have not demonstrated fundamental inconsistencies in their determination of applications. Rather, these examples demonstrate the tensions present within Goostrey, and the wider area, the variables that are unique to each site relative to JBO, and the local, national and international significance of the observations undertaken at JBO. I am not therefore persuaded that the Council's determination of the proposals subject to appeals A and B in my decision demonstrates inconsistency amounting to unreasonable behaviour.

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<sup>1</sup> APP/R0660/W/15/3129954 and APP/R0660/W/16/3166025

<sup>2</sup> Appendix A – Cheshire East Council 'Statement of Defence Against Award of Costs'

<sup>3</sup> APP/R0660/W/16/3166025

<sup>4</sup> Appendix D – Cheshire East Council 'Statement of Defence Against Award of Costs'

10. Finally, with regard to the co-operation of the other party or parties, JBO's stance regarding the proposals was set out in their consultation responses during the course of the respective planning applications. Difficulties regarding the arrangement of meetings does not amount to unreasonable behaviour, nor does expanding upon and supporting those consultation responses during the appeal process, particularly where the other party does likewise to support their case. Despite the Inspector's previous comment<sup>5</sup> that the terminology used in the response to applications was to be reappraised, it was agreed that this has not happened. I have considered the matter of consistency, above, and concluded that there are a range of factors of influence and at play in relation to each and every site, and whilst the yardstick of the terminology may not change, it is clear from the evidence that those site circumstances inform the Council's assessment of the terminology that the consultation responses are couched in. The reliance upon detailed evidence and calculations to support the initial consultation response, and the subsequently the Council's decisions, does not amount to unreasonable behaviour.

### **Conclusion**

11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified in this instance.

*Graeme Robbie*

INSPECTOR

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<sup>5</sup> Paragraph 18 – APP/R0660/W/3166025