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## Costs Decision

Site visit made on 24 September 2019

**by S Thomas BSc (hons) MSc MRTPI**

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

**Decision date: 13 May 2020**

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### **Costs application in relation to Appeal Ref: APP/G1630/W/19/3233022 Field Adjacent to Hawthorn House, Main Road, Minsterworth, Gloucestershire GL2 8JH**

- 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 Mrs Samantha Watson for a full award of costs against Tewkesbury Borough Council.
  - The appeal was against the refusal of permission in principle for residential dwellings estimated between 3-5 in number.
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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 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. The application for costs is based on several grounds.
3. Permission in Principle is a relatively new route to obtaining planning consent, with guidance to the process set out in PPG. The Council have interpreted the guidance and came to the view that archaeological investigation was necessary at this stage in order to determine whether the principle of the minimum number of dwellings could be achieved. Whilst the Council have interpreted PIP Guidance in terms of the need and timings for an archaeological investigation at PIP stage differently to my findings in the appeal decision, I do not consider they have acted unreasonably as they have justified their reasons clearly. In any event this was only one reason for refusal with the Council also refusing the application on the basis of conflict with development plan policies. Therefore, the applicant would have had to seek an appeal on these grounds. The position taken by the Council therefore in relation to archaeology has not resulted in additional costs to the applicant.
4. The application was not determined in line with the statutory timeframes. The available evidence indicates that an extension of time was agreed to 8<sup>th</sup> February 2019 but with the final written determination being issued on 17<sup>th</sup> April 2019. The email trail provided indicates officer sickness was a contributory reason to that delay with the applicant seeking a response over a number of emails. Whilst the applicant considers there to be some

unreasonable behaviour in the procedure leading up to the appeal, I have no evidence before me to indicate that this is the case and similarly, this delay has not caused the applicant any additional expense during the appeal process.

5. Based on the available evidence I have nothing to indicate there was a failure of the Council to disclose and discuss information regarding the objections to the scheme, or to the assertions made by the applicant regarding non planning matters influencing the decision-making process. I acknowledge the applicant's points regarding the timing of when reasons for refusal were discussed with her. Again, based on the evidence before me the Council has set out clearly its reasons for refusal in its officer report after considering all the evidence presented. Whilst I acknowledge the frustration that the Council has taken a different view on matters to the applicant, this does not amount to unreasonable behaviour.
6. PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal on appeal. In my view, the Council have provided clear reasons and recommendations why it considers that the application should be refused and taken a balanced approach in considering these to inform the reasons for recommending refusal.
7. Notwithstanding my findings on the appeal, the Council is not duty bound to approve an application on the basis that it does not have a 5 year housing land supply and is within its rights to recommend the refusal of a planning application if they consider it is not accordance with policy in the weighing up of their decision. Indeed, such an approach is supported by the Courts<sup>1</sup>. Moreover, the attribution of weight is a matter for the decision maker. Accordingly, I do not find that the Council has behaved unreasonably.
8. I acknowledge the Parish Council have referred to matters relating to insufficient detail in their response to the planning application. However, the Case Officer would have weighed up the evidence provided in the Parish Council's consultation response before making a recommendation on the planning application. Therefore, whilst there is no evidence to indicate the Parish Council did not know about the parameters of a PIP application, this would not have prejudiced the determination of the application. Further there is no evidence that the Council have not advised the Parish Council regarding these types of applications. Therefore, I find no unreasonable behaviour on the Council's part.

### **Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

*Stephen Thomas*

INSPECTOR

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<sup>1</sup> Gladman Developments Limited v SSHCLG and Corby Borough Council and Uttlesford District Council [2020] EWHC 518 (Admin)