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## Costs Decision

Site visit made on 21 May 2020

**by Phillip J G Ware BSc DipTP MRTPI**

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

**Decision date: 10 June 2020**

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### **Costs application in relation to Appeal Ref: APP/E2340/W/20/3244719 Junction of Greenberfield Lane and Gisburn Road, Barnoldswick BB18 5LJ**

- 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 MJF Pension Trustees Ltd for a full award of costs against Pendle Borough Council.
  - The appeal was against the refusal of planning permission for the construction of a new access and the erection of 17 houses.
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### **Decision**

1. The application for an award of costs is allowed in part in the terms set out below.

### **Reasons**

2. Planning Practice Guidance 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 application was recommended for approval by officers, particularly in the light of the grant of planning permission for 20 dwellings on the site on appeal in 2017, but planning permission was refused by Members. The Council has noted that this was a legitimate democratic decision – but this is not the issue in dispute in the costs application.
4. The appellant has alleged that the Council has failed to permit a development which should have been approved, and has failed to produce substantial evidence in support of the decision. The claim is for full costs on that basis.
5. The application was refused for three reasons, and it is useful to consider the costs application in those terms.
6. Firstly there was a highway reason for refusal. The previous appeal decision, although an outline permission, specifically approved the access location onto Greenberfield Lane. The current appeal related to a full proposal and moved the access point a short distance to the east, to a point giving onto an existing junction. The Council, in its comments on the costs application, noted that the access was relocated. However this is purely a matter of fact, and other than general assertions related to the allegedly confusing nature of the resulting junction, the Council failed to submit any substantial evidence in support of this reason for refusal. The highway authority did not object to the proposal. This is an unreasonable stance for the authority to have taken in the absence of any

technical evidence, and undoubtedly put the appellant to the expense of contesting the appeal in relation to this reason for refusal.

7. A second reason for refusal related to the harm to the visual amenity of the area which would be caused by the removal of three trees from the site. However, after the Council's planning decision, a separate application to fell these trees was submitted and approved on safety grounds. This decision is not a matter before me, and I do not comment on its merits. However, in the light of the removal of the trees, the authority changed its position to a criticism of the landscaping, including replacement trees, in the appeal scheme. This could have been a matter raised in the original reasons for refusal, but it was not. The general assertion that the replacement trees and landscaping was inadequate falls far short of a sound reason why the appeal should be dismissed, and the Council acted unreasonably in this respect
8. The final reason for refusal related to criticism of the design of the proposal. Although the previous appeal decision included some details, it was legitimate for the authority to consider the merits of the design at this later stage. I appreciate that discussions had gone on between the appellant and the officers of the Council, and I can understand that the appellant would be disappointed with the outcome of the application. However the streetscene implications of the proposal are a matter of legitimate professional opinion and, although I do not agree with the position which the Council has taken, I do not think it was unreasonable for it to have done so.
9. Overall I consider that the Council acted unreasonably in relation to the highways and trees reasons for refusal, but not in relation to the design reason. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs in relation to the highway and trees reasons for refusal is justified.

### **Costs Order**

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Pendle Borough Council shall pay to MJF Pension Trustees Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the highway and trees reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Pendle Borough Council details of those costs with a view to reaching agreement as to the amount.

*P. J. G. Ware*

Inspector