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## Costs Decision

Site visit made on 5 October 2020

**by Graham Chamberlain BA (Hons) MSc MRTPI**

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

**Decision date: 13<sup>th</sup> October 2020**

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### **Costs application in relation to Appeal Ref: APP/C1950/W/20/3253628 20 Gresley Close, Welwyn Garden City, Hertfordshire AL8 7QB**

- 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 Bouma Van Der Have for a full award of costs against Welwyn Hatfield Borough Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a development described as 'Alterations to the front and rear elevations to include new windows within the front roof slope and rear dormer and raising the roof height'.
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### **Decision**

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

### **Reasons**

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. It also states that a Council is at risk of an award of costs if it failed to determine an application in the time limits and there were no substantive reasons for delaying the proposal.
3. The application was received by the Council on the 3 February 2020. Its acknowledgement letter, not sent until the 12 February 2020, confirmed that a decision would be due on or before the 30 March 2020. The consultation on the application began on the same day with the earliest decision date being the 4 March 2020. On the 24 March the Council made contact with the applicants' agent raising concerns with the proposal. This was responded to the same day with amended drawings.
4. The Council's Planning Officer emailed again on the 25 March and confirmed that the amendments had been considered by a manager and that further amendments were necessary. The applicants' agent provided further amendments on the 26 March. Although close to the target date for a decision, this appears to have been constructive dialogue that would have enabled the Council to determine the application before the 30 March target date.
5. However, there was no further correspondence from the Council until 6 April. Although this was after the 30 March target date, it is understandable, because the national lock down resulting from the Covid-19 situation had commenced and consequently there would have been a period of adjustment.

6. That said, the email sent by the Council on the 6 April referred to the need for additional consultation and raised further concerns with the design of the dormer window, suggesting that the design should be fundamentally altered from a flat to a pitched roof. The design comments contradicted previous advice and the point regarding re-consultation was inconsistent with the Council's approach to another application nearby (6/2019/0863/HOUSE).
7. Regardless of whether the consultation was necessary, it was unreasonable of the Council to have missed this in the first place because the location of the site relative to the conservation area would have been immediately apparent. It then raised this oversight only after the target date for a decision and compounded this unreasonable behaviour by failing to take the applicants up on their offers made on the 6 and 22 April to display the site notice and provide photographic evidence that this had been done. The Council failed to properly communicate why this would be unacceptable and did not display the site notice until 15 June and a press notice until 24 June.
8. Crucially, the Council has ultimately concluded that the scheme as submitted on the 26 March should be approved. Thus, the amendments sought on the 6 April were unnecessary. The implication being that had the Council properly undertaken the consultations it considered to be necessary from the 12 February it would have been able to make a decision on the application around the target date, even when allowing for the Covid-19 lock down.
9. A short delay in determining the application due to the national lock down would have been understandable. However, in this instance the lengthy delay was mainly because the Council sought what ultimately transpired to be unnecessary design alterations and had made errors in failing to initially publicise the application in a way it subsequently considered to be necessary and, when this came to light, failing to work with the applicants to resolve this or communicate effectively. Accordingly, there were no substantive reasons to justify the length of the delay that has occurred. Thus, the appeal could have been avoided altogether with better communication and case management. The applicants have consequently incurred unnecessary expense in submitting the appeal.
10. 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 full award of costs is justified

### **Costs Order**

11. 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 Welwyn Hatfield Borough Council shall pay to Mr & Mrs Bouma Van Der Have the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicants are now invited to submit to Welwyn Hatfield Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Graham Chamberlain,*  
INSPECTOR