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## Costs Decisions

Site visit made on 1 December 2020

**by Darren Hendley BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> December 2020

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### **Application A: Costs application in relation to Appeal Ref:**

**APP/G2815/W/19/3232099**

**Land rear of 7-12 The Willows, Thrapston, Northamptonshire NN14 4LY**

- 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 Lourett Developments Ltd for a full award of costs against East Northamptonshire District Council.
  - The appeal was against the refusal of planning permission for a residential development to erect four dwellings.
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### **Application B: Costs application in relation to Appeal Ref:**

**APP/G2815/W/19/3232099**

**Land rear of 7-12 The Willows, Thrapston, Northamptonshire NN14 4LY**

- 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 East Northamptonshire District Council for a partial award of costs against Lourett Developments Ltd.
  - The appeal was against the refusal of planning permission for a residential development to erect four dwellings.
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## **Decision**

1. Application A for an award of costs is refused and Application B for an award of costs is refused.

## **Procedural Matter**

2. Both main parties also submitted costs claims prior to the original decision on the appeal that was quashed by order of the High Court. The High Court also quashed the partial costs decision that was awarded to the appellant. That award was based on matters in relation to five-year housing land supply. This is no longer in dispute between the main parties in so far as to what is now in disagreement relates to housing mix and character and appearance. Hence, it would not justify awarding costs against the Council. Accordingly, I have focussed my deliberations on the matters that are contained in the costs applications since the quashed decisions.

## **Reasons**

3. The Planning Practice Guidance (PPG) 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.

*Application A*

4. The applicant's (the appellant) costs claim is made on substantive grounds. This includes a failure of the Council to produce evidence to substantiate each reason for refusal on appeal; and, making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. On both these counts, the applicant cites a lack of evidence from the Council on the assertion that the height of the proposed dwellings at 7.2 metres would exceed that of the neighbouring properties.
5. I am not however persuaded this accurately represents the Council's position. In my view, what the Council is concerned with is more centred on a lack of evidence about the height of the neighbouring dwellings in order to compare it with that of the proposed dwellings.
6. In addition, when the applicant did put forward scaled evidence of the height of a neighbouring property, this was after the Council had made its last appeal submission. As a consequence, it was not in a position to respond further on the height evidence. Whilst the Council should have access to this information as it related to a planning permission, it is for the applicant to put forward evidence to justify its position, rather than for an opposing party to seek it out.
7. More broadly, the Council's evidence on character and appearance satisfactorily amplifies the concerns that are set out in the related reason for refusal and the Planning Officer Report. The Council explain what it considers are the character qualities of the area and why the proposal would be in conflict. The Council also withdrew its concerns over the backland location following a recent grant of planning permission for a housing development on the site<sup>1</sup>.
8. As such, the Council's position is not tantamount to one without evidence or making vague, generalised or inaccurate assertions. It does not amount to unreasonable behaviour.
9. The applicant also considers that the Council has acted unreasonably by refusing planning permission on a planning ground capable of being dealt with by conditions. This risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. The applicant refers to conditions related to housing mix and height.
10. Whether or not conditions can address these issues largely relates back to each party's established position. The Council consider that scale is a determinative factor in the housing mix and raise broader concerns than height in relation to the scale of the proposed dwellings. Whilst I disagree for the reasons that I have set out in my appeal decision, it is not a position that is unjustified with the evidence that the Council has presented. It is therefore understandable why the Council considered that suitable conditions would not enable the proposed development to go ahead.
11. The same applies with regard to the fallback position of the approved housing development on the site, and what weight the main parties attach to it. The parties' views differ on how similar that scheme is with the proposal that is the

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<sup>1</sup> Council ref: 19/01616/OUT

subject of this appeal, and provide evidence to that effect. None of this constitutes behaving unreasonably.

12. The applicant is also of the view that the Council has persisted in objections to a scheme or elements of a scheme which an Inspector, as is relevant in this case, has previously indicated to be acceptable. That decision has, however, been quashed. Even on matters that were not subject of the quashing, they are still for redetermination. To what extent they are taken into account is a matter of judgement. The Council's submissions adequately demonstrate why it has taken a different tact to that of the Inspector in the quashed decision. Hence, it is not simply persisting in objections, because it has set out in evidence why it continues to have concerns. This does not amount to unreasonable behaviour.

#### *Application B*

13. The applicant (the Council) has raised procedural grounds. This relates to a lack of co-operation by the appellant by failing to respond to correspondence regarding housing mix and scale, and introducing a new argument, or matter, at the final submissions stage of the process.
14. With regard to housing mix and scale, the appellant's position has been well-versed through the various submissions that have been made during the appeal. The confirmation of the maximum height of the proposed dwellings is more recent, although the applicant has had the opportunity to respond on this matter and has done so. Hence, there has not been a lack of co-operation on housing mix and scale that corresponds to unreasonable behaviour.
15. The applicant considers that the appellant has raised a new point in relation to that Policy 30(a) of the North Northamptonshire Joint Core Strategy 2011 – 2031 (2016) should be considered out of date. All parties were given the opportunity to make representations with regard to any material change in circumstances which may have arisen since the quashed decision. This also does not amount to unreasonable behaviour.

#### **Conclusion**

16. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to Application A or Application B. An award of costs is not, therefore, justified in relation to either application.

*Darren Hendley*

INSPECTOR