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## Costs Decision

Site visit made on 3 December 2020

**by I Jenkins BSc CEng MICE MCIWEM**

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

**Decision date: 27<sup>th</sup> January 2021**

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### **Costs application in relation to Appeal Ref: APP/J1915/W/20/3255734 Cromer Hill Common, (near) B1037, Ardeley, Stevenage, East Hertfordshire, SG2 7QA**

- 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 Paul King for a full award of costs against East Hertfordshire District Council.
  - The appeal was against the refusal of the Council to grant planning permission for erection of a barn to be used for secure storage of agricultural machinery and animal feed, together with an area for shelter.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The appellant's costs application was submitted in writing, as were the Council's response and the appellant's final comments.
3. The national *Planning Practice Guidance* (PPG) indicates that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Furthermore, awards against a local planning authority may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
4. The appellant has indicated, in summary, the main reasons for his costs application are: in 2004 the Council granted planning permission for similar development, the details of which it concealed until a late stage in the appeal process; the Council failed to determine similar cases in a consistent manner; and, it has prevented development which should clearly be permitted. The appellant considers that this amounts to unreasonable behaviour which has led to him incurring expense in the appeal process which would not otherwise have been necessary. His application is for a full award of costs.
5. The examples given by the PPG of behaviour that may give rise to a procedural award against a local planning authority include deliberately concealing relevant evidence at planning application stage or subsequent appeal. However, in my judgement, the appellant's claim that the Council concealed evidence is without merit. The Council has indicated that the Public Access system on the Council's website has a record of that previous application. Furthermore, the Delegated Officer Report clearly identifies and references the

- previous grant of planning permission referred to (Ref. 3/02/2433/FP). It was open to the appellant to request the associated details from the Council at any point.
6. The PPG indicates that the types of behaviour that may give rise to a substantive award against a local planning authority include, amongst other things, not determining similar cases in a consistent manner, and preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development plan, national policy and other material considerations.
  7. However, as I have indicated in my appeal decision, the circumstances of the previous approval are not directly comparable to those in the case before me. Firstly, the siting of the previously approved barn was materially different to that which is the subject of the current appeal and secondly, the planning policy framework has changed in the intervening period since 2004. In my judgement, the 2 cases are not similar.
  8. The Council's reason for refusal indicates that the proposed barn, by reason of its inappropriate size, scale and siting, would impact on the character of the site, the surrounding rural area and the wider countryside in a manner contrary to Policies GBR2 and DES4 of the *East Herts District Plan, 2018*. Whilst I disagree with that view, it is a matter of judgement and having reached that conclusion, I consider that it was not unreasonable for the Council to regard it as a legitimate reason for refusal. I am satisfied that the Council has provided evidence at appeal to substantiate the reason why it chose to refuse permission, with reference to location and scale of development and Development Plan policy. The evidence provided by the Council provides a respectable basis for its stance.
  9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

*I Jenkins*

INSPECTOR