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## Costs Decision

Site visit made on 16 March 2021

**by Helen O'Connor LLB MA MRTPI**

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

**Decision date: 15 April 2021**

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### **Costs application in relation to Appeal Ref: APP/D3125/W/20/3264356 Cotswolds Hotel and Spa, Road from Chipping Norton to Oxford Road, Southcombe, Chipping Norton OX7 5QH**

- 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 Glucka Wijesuriya of Cotswolds Hotel & Spa for a partial award of costs against West Oxfordshire District Council.
  - The appeal was against the refusal of outline planning permission for development described as 'Outline planning permission with all matters except access reserved for the development of a holiday village with 73 holiday homes (Class C3), landscaping and associated infrastructure, and other ancillary development at Cotswolds Hotel and Spa'.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant considers that a partial award of costs should be made on three grounds. Firstly, that the Council's pre-application advice did not indicate that there would be an objection to the principle of the development but this subsequently formed part of the first refusal reason. He asserts it was unreasonable and a wasted expense to obtain pre-application advice.
4. Secondly, in relation to the first refusal reason, he asserts that the Council has persisted in arguing that the proposal for a holiday village development is tantamount to unrestricted residential development in the countryside. A previous appeal decision at the site had established that holiday accommodation occupancy can be controlled by a planning condition. Therefore, the applicant has been put to the additional cost of defending the point a second time.
5. Finally, the provision of additional information and clarifications prior to the application being determined would have resulted in refusal reasons 2-4 on the Council's decision notice being satisfactorily addressed. Had the Council allowed longer for the determination of the application as requested by the applicant, it is likely that there would have been only one substantive refusal reason. He contends that the Council were unreasonable to reject his request and that this has led to wasted expense dealing unnecessarily with these issues.

6. The PPG gives examples of unreasonable behaviour where local planning authorities are at risk of an award of costs. This includes the following:
  - Refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
  - Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
  - Not reviewing their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.
7. The National Planning Policy Framework (the Framework) encourages early engagement signalling that it has significant potential to improve the efficiency and effectiveness of the planning application system for all parties<sup>1</sup>. The applicant made a detailed request for pre-application advice for a proposed holiday village in July 2018. The Council gave a brief written response in September 2018. This indicated that the proposals were 'premature' but did not refer to any policy-related opposition to the principle, thereby avoiding a central point rather than addressing it. Had there been a fundamental concern in this regard it might have been reasonably anticipated that the Council would have said so at this juncture.
8. Accordingly, I can understand why the applicant was aggrieved that such an objection subsequently formed part of the first refusal reason for the appeal proposal. However, the scope of my determination does not extend to reviewing the quality of the pre-application advice given. Furthermore, although behaviour and actions at the time of the planning application can be taken into account, costs can only be awarded in relation to unnecessary or wasted expense at the appeal. Consequently, the time and expense associated in seeking pre-application advice would not be covered.
9. The Council have subsequently provided evidence to substantiate their concerns regarding the principle of the development, which, as will be seen from my decision, I found to be justified. The applicant suggests that had the pre-application advice indicated there was an in-principle issue then he might have considered a different scheme. That being so, once he was appraised of the Council's refusal reasons for the appeal scheme, he could have submitted a different planning application rather than proceed to appeal. Consequently, I am not persuaded that the failings in the Council's pre-application advice amounted to unreasonable behaviour within the meaning of the PPG that directly led to unnecessary expense in the appeal process.
10. The Council's appeal statement sets out a detailed contextual description which includes general references to isolated housing in the countryside, policy H2 of the West Oxfordshire Local Plan 2031 and the Council's housing supply position. I acknowledge that the material provided could have been more concise. However, it is not shown that the Council objected to the proposal on the basis that it was general housing rather than holiday accommodation. This

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<sup>1</sup> Paragraph 39

is reinforced by the absence of a reference to policy H2 on the first refusal reason on the Council's decision notice.

11. Moreover, the Council previously granted planning permission<sup>2</sup> for the self-catering apartments at the site with a condition that restricted them to holiday use. Notwithstanding that the subsequent appeal decision<sup>3</sup> revised the specific wording of the condition, this indicates that the Council do not generally dispute that occupancy can be restricted in this way. My reading of the Council's submission did not so much argue that a condition to this end could not be imposed or enforced, rather that they had some misgivings regarding how realistically it could be maintained if the demand for the scale of holiday accommodation faltered after the units were built. Therefore, I do not consider that the Council persisted in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
12. Paragraph 38 of the Framework states that local planning authorities should approach decisions on proposed development in a positive and constructive way. This must be balanced with paragraph 47 which stipulates that decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period is agreed in writing with the applicant. The Council had discretion whether to accept further additional material and prolong negotiations following the submission of the planning application. Although, had they done so the scope of objections may have been reduced, given that the Council had substantive concerns with the principle of the proposal, it would have been unlikely to have affected the ultimate outcome. In these circumstances, it was not unreasonable for them to proceed to make the decision.
13. The evidence further shows that some officers within the Council and other consultees were open to subsequent dialogue and consideration of additional information following the decision. As such, it is not shown that the Council refused to engage on technical matters.
14. Additionally, although the applicant had indicated that an appeal was an option he was considering, the evidence before me shows that it was not until 23 November 2020<sup>4</sup> that he informed the Council he was definitely going to submit an appeal. He wanted to agree those areas which remained in dispute in order to reduce the associated level of work. He further stated that he was submitting the appeal the following week, albeit that a specific date was not given. This timing broadly coincided with the deadline for making an appeal at the beginning of December 2020.
15. Nevertheless, this did not leave much time for the Council to draw together and review the considerable information relating to the technical discussions that had been taking place in relation to ecological, drainage and air quality issues. The Council did not act unreasonably in failing to respond within the limited timeframe during which it might have made a difference to the extent of material submitted by the applicant for the appeal. The Council subsequently conceded in its appeal statement that it only intended to rely on its first reason

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<sup>2</sup> Reference 17/01758/FUL

<sup>3</sup> Reference APP/D3125/W/18/3205571

<sup>4</sup> Email dated 23.11.20, enclosed with Applicant's Costs application

for refusal which reflects that it did review its case reasonably promptly following the lodging of the appeal.

16. It is highlighted by the applicant that the Council failed to respond not only to the email dated 23 November 2020 but also to follow up requests in January and February 2021. Be that as it may, by then the applicants case for the appeal had been lodged covering all the reasons for refusal, so a response from the Council either way would not have made a difference to the amount of time and expense incurred by the applicant in preparing it.

### **Conclusion**

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Helen O'Connor*

Inspector