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## Costs Decision

Site visit made on 1 June 2021

**by Patrick Hanna MSc MRTPI**

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

**Decision date: 13 July 2021**

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### **Costs application in relation to Appeal Ref: APP/W4325/W/21/3266888 Land off Carr Lane, Hoylake**

- 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 Graeme McGaffney for a full award of costs against Wirral Metropolitan Borough Council.
  - The appeal was against the failure of the Council to issue a notice of its decision within the prescribed period on an application for planning permission for erection of up to 61 assisted living apartments and up to 30 care bungalows and associated infrastructure works.
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### **Decision**

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

### **Reasons**

2. Paragraph 030 of the Planning Practice Guidance (PPG) states 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.
3. The applicant is wholly dissatisfied with the standard of service provided by the Council in its handling of the planning application, in that, firstly, there was a lack of communication from the Council case officer, secondly, that the case officer failed to work positively with the appellant and, finally, that the Council failed to give due notice within the prescribed timescale.
4. PPG paragraph 033 indicates that although costs can only be awarded in relation to unnecessary or wasted expense at appeal, behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded.
5. From the evidence, communication between the parties consisted, in the first instance, of an unfavourable written response to the pre-application proposal. After the application had been submitted, two emails from the Council provided consultation responses. This is set against four email requests for updates from the applicant's agent. Despite the delays involved, I do not find that this is an unreasonable balance of communication between the parties, in itself.
6. Neither does this provide evidence of an unwillingness of the Council to approach the decision in the positive and creative way required by paragraph 38 of the National Planning Policy Framework. It is clear from the Council's pre-application response that the parties had reached different planning judgements on the acceptability of the proposal. The applicant is of course

entitled to challenge the Council's pre-application advice through the planning application process and, in the event of non-determination, by means of appeal. That said, it is not unreasonable for the Council to cease discussions on proposals that it sees no realistic opportunity to amend.

7. Even so, the prescribed period in which the Council should have issued notice on the planning application ended on 31 December 2020. Whilst the Council say its offices closed between 23 December 2020 and 4 January 2021, the Council sent email correspondence to the applicant's agent on 22 December 2020. At that point, it must have been clearly apparent to the Council that there would be a failure to determine the application within the prescribed time limits.
8. Even though the Council had a backlog of applications, high officer caseloads, and a period of unpaid leave, it should have given the applicant a proper explanation. It did not, and the PPG makes it clear at paragraph 048 that, in such circumstances, if an appeal is allowed, the Council may be at risk of an award of costs.
9. In this case, however, it will be seen from my appeal decision that I very largely agree with the Council with regard to both of the putative reasons for refusal. Whilst I found the location to be sustainable, I have concluded that the proposal would cause harm to the Green Belt by way of inappropriateness, and other identified harms, which would not be clearly outweighed by the other considerations, such that very special circumstances do not exist.
10. Therefore, I have found that the Council had reasonable concerns about the impact of the proposed development. The applicant had to address those concerns in any event. As a consequence, even if the application had been determined timeously, it is by no means certain that the appeal could have been avoided.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Patrick Hanna*

INSPECTOR