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## Costs Decisions

Site visit made on 18 January 2022

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

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

**Decision date: 15 February 2022**

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### **Costs application in relation to:**

**Appeal A Ref: APP/J1860/C/21/3283211**

**Appeal B Ref: APP/J1860/C/21/3283212**

**Appeal C Ref: APP/J1860/C/21/3283213**

**Land at (OS 8594 4112), Holly Green, Upton Upon Severn WR8 0PD**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Ms Julie Slater (Appeal A); Mrs Sheila Slater (Appeal B); Ms Sharon Slater (Appeal C) for a full award of costs against Malvern Hills District Council.
  - The appeal was against an enforcement notice alleging Without planning permission, the unauthorised erection of a garage building.
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### **Costs application in relation to Appeal D Ref: APP/J1860/W/21/3283210**

**Land off A4104, Holly Green, Upton-upon-Severn WR8 0PD**

- 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 Ms J Slater for a full award of costs against Malvern Hills District Council.
  - The appeal was against the refusal of planning permission for 'Proposed design change to plot 3 garage (Amendment to approved application 19/00955/RM)'.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the Guidance) 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.
3. The applicants consider that the Council should have granted planning permission for the garage building which was the subject of Appeals A to D, and that the Council failed to consider the changes to the site and its surroundings arising from committed housing development and maturity of the landscaping scheme.
4. The Guidance sets out that a substantive award of costs against a local planning authority may arise if it prevents or delays development which should clearly be permitted having regard to its accordance with the development plan, national policy, and material considerations. It will be seen from my appeal decisions that I have shared the Council's view that the appeal

- development should not be permitted, even taking into account the future situation as regards housing and landscaping. On that basis the Council has not prevented development which should have been permitted.
5. The appellant states that contrary to case law, the Council has not considered the fallback position of the extant permission and the relative impacts. Whilst the Council does not use the term 'fallback position', it plainly makes a comparative assessment as regards the approved garage, and acknowledges in its ground (f) representations that the appellant would be entitled to build the garage in its approved form. Thus, it appears essentially that the Council shared my view that the fallback development is visually acceptable whereas the appeal development is not.
  6. It is alleged that the Council has failed to determine similar cases in a consistent manner in view of an approval for a larger garage building nearby<sup>1</sup>. Whilst the Council does not specifically allude to this point in its costs rebuttal, it deals with it comprehensively in its appeal statement. Indeed, I found in my appeal decisions also that there are some obvious differences as between the appeal development and the other garage development cited. Thus, the Council has not failed to determine similar cases consistently.
  7. The appellant alleges that service of the notice swiftly after determination of the retrospective planning application and without warning meant that there was no opportunity for negotiation, which might have avoided the need for the appeals. It appears though that the Council was in contact with the appellant prior to registration of the retrospective application advising that the works to the garage building were unauthorised and proceeding at risk.
  8. Whilst the Council proceeded swiftly to issue an enforcement notice following the refusal of the retrospective application, it has explained that, in view of the fundamental issues related to the design of the garage, it did not consider that amended proposals would be likely to address the Council's concerns. It was not, in my view, unreasonable for the Council to seek to avoid unnecessary delay in this way bearing in mind that the appellant was aware of the Council's position.
  9. Thus, although the appellant refers to the requirement in the Council's Local Enforcement Plan 2016 (revised 2017) (EP) to seek to negotiate a solution to any confirmed breach of planning control before the issue of an enforcement notice, it is apparent that the Council had previously entered into discussions with the appellant and was of the view that negotiation following refusal of the retrospective application would not have been worthwhile in the circumstances. I do not see any contradiction in the Council's behaviour as regards its EP; the Council had already been in contact with the appellant to advise that it did not consider the garage as built to be acceptable, and has explained why it considered further discussion to not be productive.
  10. Although I found that it would be proper for the enforcement notice to include alteration of the garage building to accord with that approved previously as an alternative requirement, the Council has expressed doubt as to whether alteration could properly be achieved as opposed to demolition and rebuilding

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<sup>1</sup> Ref: 19/00711/HP

in the approved form. Thus, it was not unreasonable for the Council in the circumstances to not include such an alternative requirement in the notice.

11. For the reasons above, I do not find that the Council has acted unreasonably. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

*V Bond*

INSPECTOR