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## Costs Decision

Site visit made on 2 February 2022

**by Andrew Owen BA(Hons) MA MRTPI**

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

**Decision date: 04 March 2022**

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### **Costs application in relation to Appeal Ref: APP/J0405/W/21/3281241 Land north of Good Intent, Edlesborough LU6 2RE**

- 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 Hutchings, Attrill and Anstee for a full award of costs against Buckinghamshire District Council.
  - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for construction of fourteen dwellings including access, parking and off-site highway works.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable or by refusing planning permission on a ground capable of being dealt with by a planning condition; or in relation to procedural matters, such as not co-operating with other parties or by delaying providing information.
3. Though no formal decision was made, the Council introduced a putative reason for refusal relating to the design, the effect on the character of the area and the impact on living conditions, that hadn't been raised in the previous proposal. The current proposal is unchanged in terms of its layout and design to that previous scheme and so it was unreasonable for the Council to introduce these concerns. However, similar concerns were raised by third parties. Consequently, even if these issues had not been raised by the Council, it would have been likely that the applicant would have needed to address them as part of their final comments. In addition, as the Inspector in the previous appeal did not address issues of design, living conditions or character and appearance, the Council did not introduce concerns that had already been indicated to be acceptable by the previous Inspector.
4. With regard to the off-site highways works, the highways authority have commented that they would achieve sufficient visibility at the Good Intent/High

Street junction and they have passed a Stage 1 Safety Audit. A Grampian style condition could be imposed to secure such works. Nonetheless, the impact of those works, such as on the availability of parking on High Street, is a matter that the Council are able to consider which would not necessarily be within the remit of the highways authority and so would not be addressed by a Grampian condition. Their concerns in this regard are not unreasonable, albeit I have disagreed with them in my decision on the appeal.

5. With regard to procedural matters, it is clear that after the application was submitted in February 2021 the Council provided no indication of their concerns until the submission of their appeal statement in January 2022. However the applicant used their right of appeal against the Council's failure to determine the application and the Council's statement was received in accordance with the appeal timetable. Whilst all appeals of this nature are evident of a lack of prompt determination by the Council and indicate a lack of good practise, it is not necessarily unreasonable behaviour. In any case the applicant had an opportunity to address the Council's concerns in their final comments and did so thoroughly.
6. Similarly, the matter of the amount of the biodiversity contribution was not raised until during the latter stages of the appeal. However, again, the applicant was given opportunity to respond and was not prejudiced by this.
7. The applicant also points out that the Council have misquoted policy EP12 of the Edlesborough Neighbourhood Plan, using the word 'requires' instead of 'preferably'. Whilst I recognise this error, it is of little consequence. Also the applicant refers to new highway comments provided at the appeal stage that contradict the original highway comments. I can find no evidence of such comments and indeed the highways authority's support since June 2021 appears to be consistent.
8. Overall, it has not been demonstrated that the Council behaved unreasonably resulting in unnecessary or wasted expense on behalf of the applicant, as described in the PPG. Therefore the application for an award of costs is refused.

*Andrew Owen*

INSPECTOR