



## Costs Decision

Site visit made on 1 March 2022

**by K Savage BA(Hons) MPlan MRTPI**

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

**Decision date: 25 April 2022**

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### **Costs application in relation to Appeal Ref: APP/B1930/W/21/3282256 Land to rear of 76-80 Oakwood Road, Bricket Wood, St Albans AL2 3QA**

- 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 S Aherne (Edit Residential) for a full award of costs against St Albans City and District Council.
  - The appeal was against the refusal of planning permission for 6 x 3 bedroom dwellings, access, landscaping and all enabling works.
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### **Decision**

1. The application for a full awards of costs is allowed in the terms set out below.

### **Reasons**

2. The 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 or wasted expense in the appeal process. An application may be made on procedural grounds, relating to the appeal process, or substantive grounds relating to the planning merits of the appeal.
3. The PPG adds that local planning authorities are at risk of an award of costs if they make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and which prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant's case refers both to procedural and substantive grounds. In respect of the former, it is alleged that the Council failed to advise the Inspectorate of its decision to refuse a subsequent application on the same site that was a relevant material consideration for the present appeal, in that the reasons for refusing this later proposal did not include the potential pressure to prune or fell trees. Hence, the applicant was left in an uncertain position as to the actual reason for refusal being pursued by the Council in the present case.
5. On the substantive matters, the applicant contends that Members of the Council's Planning Committee acted unreasonably in refusing the later application against the recommendations of its officers and various consultees and warnings from officers at the meeting about the risk of costs in pursuing such a course of action. The applicant further refers to an 'opinion' referring to other alleged failures of the Council, but this has not been provided to me in evidence.

6. The Council rebuts these claims, stating that its Members fully debated the proposal and that officers were consulted on the potential reason for refusal before a vote was taken. It adds that the decision was one of planning judgement, based on sound planning grounds, which the Committee was entitled to make.
7. The applicant's claims in this case refer in large part to the Council's actions during a *subsequent* planning application to the one before me at appeal. The PPG is clear that costs may only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. I consider the Council's actions in respect of the later application only in terms of whether it led to unreasonable behaviour in respect of *this* appeal. It is not for me to consider whether the Council's refusal of that application was, in itself, unreasonable, as that is a separate proposal which, to my knowledge, has not been appealed.
8. In terms of the procedural claim, whether or not the Council informed the Inspectorate of its decision to refuse the later application, the applicant was able to raise the matter as a potential material consideration during the course of the appeal, and did so. Whilst the appellant may have expected the Council to alter its position with respect to this appeal on the back of its later decision, the evidence before me does not indicate that the Council failed to adhere to any procedural requirements at the appeal stage.
9. I can understand the applicant's confusion as to the implications for this appeal in the later application seeming to overcome the reason for refusal relating to pressure on trees. However, despite there being limited details of the later proposal before me, it is indicated that this reason for refusal was overcome, at least in part, because of additional windows being proposed. Ultimately, those plans, although being referred to as falling within the scope of the Wheatcroft principles, have not been put to me for consideration in this appeal. Therefore, I determined the appeal on the basis of the original plans, and the Council was not at fault for continuing to defend a reason for refusal which referred to those plans, not later plans which were different in at least one notable aspect.
10. Moreover, the Council's reasons for refusal of this later application are not relevant to my considerations of this costs application, as they have not been contested by the Council through this appeal. On procedural matters, therefore, I do not find unreasonable behaviour by the Council.
11. In terms of substantive matters, the fact that the Planning Committee did not agree with the officer recommendation is not itself justification for an award of costs. However, the reasons for doing so need to stand up to scrutiny and be supported by robust, objective evidence. The Council indicates that a transcript of the committee meeting has been provided, but this is not before me in evidence. A hyperlink to a video of the meeting is given, but I have not had regard to this as it is the responsibility of each party to provide its evidence fully in writing.
12. Ultimately, there is little detail before me as to the analysis carried out by Members at the meeting in determining to refuse the appeal scheme. In particular, it is not clear that Members fully considered any perceived harm against the potential benefits of the scheme in the overall planning balance,

which was to take into account the Council's acknowledged shortfall in housing land supply and the subsequent engagement of the presumption in favour of sustainable development under Paragraph 11 of the National Planning Policy Framework (i.e. the tilted balance).

13. The reasoning subsequently set out in the Council's statement of case mainly relates to the concept of natural pruning and the resulting debris caused by it, and the potential difficulty in new trees establishing themselves due to the siting of dwellings and other trees. However, whilst this is relevant in so far as it may lead to debris, the Council offers no substantive evidence to explain how this would translate into its conclusion that there would be pressure on a scale that would result in '*substantial and significant negative impacts on future requests of tree works*'.<sup>1</sup> Ultimately, I consider the Council's position was based on perceived and ill-defined impacts resulting from the development that were not supported by the evidence before me.
14. In addition, the Council in its statement of case undertakes two planning balances<sup>2</sup>. Neither of these clearly acknowledge that the tilted balance was engaged by the Council's shortfall in housing land supply, and neither are conducted in accordance with the wording of paragraph 11 of the Framework. As such, it is unclear that the Council, either at application stage or appeal stage, fully acknowledged the implications of paragraph 11 of the Framework in reaching its decision.
15. In these respects, I find that the Council has failed to take into account all relevant material considerations, and instead based its decision on vague, inaccurate assertions not supported by objective evidence. Consequently, the Council has failed to substantiate its reason for refusal. This amounts to unreasonable behaviour as set out in the PPG and it follows that the appellant has been put to the unnecessary expense of making the appeal.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that St Albans City and District Council shall pay to Mr S Aherne (Edit Residential) the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*K. Savage*

INSPECTOR

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<sup>1</sup> Council's Statement of Case, paragraph 6.17

<sup>2</sup> Paragraphs 6.16/6.17 and 8.2