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## Costs Decision

Site visit made on 19 January 2022

**by Paul Martinson BA (Hons) MSc MRTPI**

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

**Decision date: 20 May 2022**

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**Costs application in relation to Appeal Ref: APP/B2355/W/21/3282615  
7 Law Head Farm, Higher Greens, Blackwood Road, Stacksteads, Bacup  
OL13 0JS**

- 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 Rossendale Borough Council for a full award of costs against Mr and Mrs Garner.
  - The appeal was against the refusal of planning permission for menage, agricultural building, glamping pods and associated amenity block.
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### Decision

1. The application for a full award of costs is refused. However, a partial award of costs is granted in the terms set out below.

### Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.
3. Paragraph 52 of the PPG makes clear that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs includes resistance to, or lack of co-operation with the other party in providing information or discussing the application, delay in providing information or other failure to adhere to deadlines or only supplying relevant information at appeal when it was requested, but not provided, at the application stage.
4. The Council contends that the appellant's failure to demonstrate that the site was suitable for the proposed use with regard to the risks identified by the Council's Environmental Protection Officer has caused the Council to incur unnecessary and wasted expense in preparing statements and rebuttals to the subsequent appeal and costs application submitted by the appellant. The Council argues it would have been more appropriate to address the reasons for refusal by working proactively with the local planning authority and submitting a new revised application which would have been exempt from a fee.
5. The appellants provided very little information with regard to contaminated land as part of the application. Indeed, at section 14 of the application form the appellants have ticked 'no' to questions relating to whether the land is known to be contaminated, whether contamination is suspected for all or part of the

site, or whether the proposed use would be particularly vulnerable to contamination. The application form is clear that answering yes to any of these questions requires the submission of a contaminated land assessment. It will be seen from my decision that I have agreed with the Council that in the circumstances of the appeal, information about land contamination would be required and could not be left to a condition.

6. Whilst an appeal may not have been avoided, as the Council objected on other grounds, the appellant could have addressed the issue of contaminated land on receipt of the Council's email, sent before determination. It is clear from that email that further engagement is necessary prior to determination. Although this email is not before me, its content has not been disputed. Equally, notwithstanding that they were not directly requested, matters comprising other reasons for refusal could also have been addressed through engaging with the Council (and agreeing to an extension of time) during the determination period, following the email. I conclude that the failure to supply relevant information until appeal amounts to unreasonable behaviour on the part of the appellant, as set out in PPG. As a consequence, the Council has incurred unnecessary expense at appeal.

### **Conclusion**

7. I have therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified, relating to the matters that could have been addressed at the application stage, namely those included within the reasons for refusal with the exception of character and appearance.

### **Costs Order**

8. 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 Mr and Mrs Garner shall pay to Rossendale Borough Council, the costs of the appeal proceedings described in the header of this decision limited to those costs incurred in defending the Council's reasons for refusal with the exception of reason 1 with regard to the effect on the character and appearance of the area, such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Mr and Mrs Garner, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Paul Martinson*

INSPECTOR