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## Costs Decision

Site visit made on 27 April 2022

**by M Clowes BA (hons) MCD PG CERT (Arch Con) MRTPI**

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

**Decision date: 27 May 2022**

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### **Costs application in relation to Appeal Ref: APP/F4410/W/21/3289887 Fairwinds, Hatfield Road (A1146), Thorne, Doncaster DN8 5RD**

- 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 and Mrs Michael and Sandra Cleary for a full award of costs against Doncaster Metropolitan Borough Council.
  - The appeal was against the refusal of planning permission for 'replacement of dwelling, 2 storey and demolition of existing dwelling, single storey within 3 months following erection and habitable state of new dwelling.'
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) 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 applicant's costs claim is made on the grounds that the Council's reasons for refusal are not substantiated; the proposal has been determined inconsistently with similar cases; not having regard to policies requiring inclusive and adaptable design; a failure to co-operate and the request for a sequential test introduced at a late stage.
4. The Council's decision notice clearly sets out 2 reasons for refusal which explain the development plan policies the proposed development is considered to fail. The Officer report explicates the reasons for refusal in more detail. Whilst the Council have confirmed that some of their calculations in relation to footprint and volume were incorrect at that time, I am satisfied that the relevant planning policies were applied and considered including the emerging Doncaster Local Plan (2021) policies. The slight err in the figures did not materially affect the application of policy to the development proposed, particularly given that the thresholds were exceeded in any event.
5. Despite finding in the applicants favour in respect of the requirement for a sequential flood risk test in the substantive appeal, the Council did provide full reasons within their decision, based on applicable policy and guidance, as to why they considered the test to be necessary. Whilst it would have been helpful for the Council to have explained the status of the emerging Local Plan policies to the applicant prior to the issuing of the decision, there is no obligation for them to do so. Clearly there is a difference of opinion between the parties in respect of the planning merits of the proposal. However, I am satisfied that the

Council did substantiate their reasons for refusal, and this does not amount to unreasonable behaviour.

6. The applicant suggests that the Council's approach in determining the proposal for a replacement dwelling is inconsistent with the approach afforded to other applications. I have agreed with the Council in the appeal decision that none of the examples cited are comparable with the circumstances of this appeal.
7. In respect of the Council not having regard to policies requiring inclusive and adaptable design, it is clear that they had regard to the applicant's requirements for a home that was adaptable to their future health needs, despite the absence of explicit reference to Policy CS14 of the Doncaster Core Strategy (2012) or Policy 45 of the then emerging Local Plan (2021) within the officer's report. The Council however concluded that the proposed dwelling was beyond what could be considered appropriate when balanced with the visual impact on the countryside. Although this could have been better articulated, this does not amount to unreasonable behaviour.
8. With regard to engagement, it is evident from the documentation before me that there was considerable dialogue between the main parties. Despite both main parties offering possible design solutions that might overcome the concerns raised, a mutually agreeable scheme could not be reached. The applicant is clear that they did not want to make further changes or concessions beyond a certain point, as is their right. Equally, the Council were entitled to determine whether the request for a meeting was a good use of resource or whether it was appropriate, given the circumstances of the pandemic that may have been applicable at the time. It appears from the evidence before me that the positions of both main parties had been clearly established at that point, and neither considered that they should change their view. In respect of delays with the application, there is no robust evidence before me to substantiate that any delays occurred as a result of conscious behaviour on the part of the Council. Rather they appear to have explained the issues throughout the planning process and gave the applicant opportunity to respond, even if they could not agree.
9. The Council have acknowledged that the request for a sequential test was made at a late stage in the planning application process. However, the Council chose not to issue the decision at that point and instead provided the applicant a period of time in which to address the issue. It appears that after several months, the applicant declined to provide the required information and requested that the application be determined. The SPD carried full weight at the time of the Council's decision such that they were entitled to conclude that a sequential test was necessary. Whilst the late request of a sequential test is regrettable, it does not in this instance amount to unreasonable behaviour.

## **Conclusion**

10. Although I understand the applicant's evident frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on all the evidence before me, I find that no action or inaction taken by the Council amounts to unreasonable behaviour as described in the PPG, directly resulting in unnecessary or wasted expense at appeal. Therefore, an award of costs is not justified.

*M Clowes*

INSPECTOR