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## Costs Decision

Inquiry Held on 26-29 April 2022

Site visit made on 29 April 2022

**by Siobhan Watson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 June 2022**

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### **Costs application in relation to Appeal Ref: APP/X3025/21/3289431 Gregory Quarry, Nottingham Road, Mansfield, NG18 1BU**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mansfield District Council for a partial award of costs against Lee O'Connor.
  - The inquiry was in connection with an appeal against the refusal of planning permission for the residential development of up to 204 dwellings; access off Quarry Lane; associated open space; landscaping; and infrastructure works (outline with all matters reserved except for access).
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### **Decision**

1. The application for costs is refused.

### **The submissions for Mansfield District Council**

2. The appellant amended the red line area of the appeal site just over a week before the Case Management Conference. The amended site excluded an area above the quarry wall as the area was not needed to deliver the development. This amendment was made late in the appeal process and no reason was given why it occurred so late.
3. The Council commissioned consultants during the application process to provide an independent geotechnical audit of the appellant's proposals in relation to the condition and stability of the existing internal quarry slopes at the site. Following this, the parties came to an agreed position.
4. As a result of the amendment of the red line edge at the later stage during the appeal process, the indicative layout was shifted away from the quarry wall. No technical information was provided in respect of how the changes might impact slope stability or what, in any, protective measures would be put in place. However, subsequently, the Appellant provided updated technical information and the Council commissioned an independent assessment of it in order to determine whether or not it could accept the amended red line boundary. The Council had to review the situation to confirm that its case would not change due to any effect that the revised plans might have on quarry wall stability. The Council employed consultants to review the information.
5. It is the Council's position that the Appellant should have paid for this expense. The Appellant has not paid and the Council says that the late changes to the red-line boundary resulted in the Council incurring additional expense. The Council argues that if such changes had been made before the application had

been determined, the Appellant would have been expected to pay for the cost the Council incurred in commissioning the independent assessment.

### **The response by Lee O'Connor**

6. The reason for the change in the red line area is that the land had been identified as not being required for the proposal. This is a rational reason. If the appellant had proposed the change at the time of the planning application the Council would have had to assess the changes anyway. There is no requirement for an applicant to pay a Local Planning Authority to assess any part of an application. It has paid the planning application fee already. It was not unreasonable to have made the amendment during the appeal process.

### **Reasons**

7. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Parties in planning appeals and other planning proceedings normally meet their own expenses.
8. The amendment was introduced at a late stage during the appeal process. This could be considered to constitute unreasonable behaviour. However, if the amendment had been made at application stage, the Council would have had to assess it anyway. The Council does not say that it would have refused to accept the amendment if it had been submitted at application stage. Instead, it says that the Appellant would have been expected to pay for the cost the Council incurred in commissioning the independent assessment.
9. Assessing a planning application is normally an expense for the Council. As the Council would have had to assess the amendment had it been submitted at application stage, I do not find any wasted or unnecessary expense as a result of the amendment having been submitted later.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the Council's claim for a partial award of costs fails.

*Siobhan Watson*

INSPECTOR