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## Costs Decisions

Site visit made on 24 May 2022

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

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

**Decision date: 16 June 2022**

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### **Application A**

**Costs application in relation to Appeal Ref: APP/E2340/W/21/3288078  
Land south of Brogden Lane, Barnoldswick**

- 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 Pendle Borough Council for a full award of costs against Applethwaite Ltd.
  - The appeal was against the refusal of planning permission for erection of 19 no. age-restricted specialist bungalows for people over 55 with associated landscaping, car parking and access from Brogden Lane.
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### **Application B**

**Costs application in relation to Appeal Ref: APP/E2340/W/21/3288078  
Land south of Brogden Lane, Barnoldswick**

- 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 Applethwaite Ltd for a full award of costs against Pendle Borough Council.
  - The appeal was against the refusal of planning permission for erection of 19 no. age-restricted specialist bungalows for people over 55 with associated landscaping, car parking and access from Brogden Lane.
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## **Decisions**

Application A

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

Application B

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

## **Reasons**

3. The Planning Practice Guidance 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.

Application A

4. The Council submits that the appellant acted unreasonably in submitting an amended highway mitigation plan and seeking that the appeal proceeds on a different basis to the submitted planning application. In submitting a revised

plan that meets the Council's concerns, it is argued that the appellant is agreeing with the Council, that alternative pedestrian provision should have been made. The Council suggest a revised planning application should have been submitted.

5. Having regard to the Wheatcroft Principles', I have determined that it would not be appropriate to accept the amended highway mitigation plan. Therefore, the consideration of the appeal proceeded on the basis of the scheme submitted to the Council. The ground upon which this application for costs is made, therefore has no substance.
6. A further consideration is that Annex M of the Procedural Guide: Planning appeals - England October 2021 states that an applicant should 'normally' make a fresh planning application. This does not prevent an alternative approach being adopted, such as an amended plan being prepared to support an appeal submission. It is then a matter for the respective Inspector to determine whether that plan should be accepted. Moreover, the appellant did in fact submit a revised planning application in October 2021 (ref 21/0848/FUL).
7. In conclusion, I find that unreasonable behaviour has not occurred and therefore an award of costs is unjustified.

#### Application B

8. The applicant seeks an award of costs on three grounds. Firstly, that the Council rejected the advice of officers and the highway authority without good reason. Secondly it is argued that the Council failed to produce evidence to substantiate the reason for refusal and thirdly it is submitted that the Council has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.
9. In relation to Ground 1, the Council Members are not bound to follow the advice they are given. Having considered all the evidence before them and using their local knowledge, it is open to the Committee to come to a different conclusion. The Council's concerns have been set out in evidence and I do not agree that the Council had no justification to differ from Officer and highway authority advice.
10. The applicant suggests the Committee should have deferred the application and sought additional evidence and further advice. It is up to the Committee to decide if they had sufficient information on which to make their decision. If they felt that they had, then there would have been no reason to defer. In terms of Ground 1, I find that the Council did not act unreasonably.
11. Turning to the second Ground, the Council provides evidence to support its position in the Statement of Case. The fact that the Council refers to the applicants own evidence, ie. the Stage 1 Road Safety Audit to support its view, is in this case unsurprising. This is because that evidence supports the Council's position that the submitted appeal scheme would cause harm to pedestrian safety.
12. The applicant suggests that the Council has taken conflicting positions, refusing the appeal scheme but recommending approval for the resubmitted planning application. The applicant seems to confuse the decision-making process. It is

not uncommon for Planning Officers to recommend approval and for the Committee to take a different view. There is no contradiction. Planning Officers recommended approval for both schemes and were consistent in their approach. Given the above, I do not consider that the Council has acted unreasonably in this regard.

13. Turning to the third and final Ground, whilst I have taken a different view to the Council and allowed the appeal, it was not unreasonable for the Council to come to a different conclusion even if that was at odds with Officers and highway authority advice. The Council have provided evidence to explain why the submitted scheme was unacceptable in highway terms. Whilst additional professional advice was not sought, this does not amount to unreasonable behaviour. Concerns about highway safety were substantiated. Accordingly, the Council did not prevent or delay a development that should clearly have been permitted. Unreasonable behaviour has not occurred.

### **Conclusion**

14. Given the above, I find in respect of both Application A and Application B, that unreasonable behaviour as defined by Planning Practice Guidance has not been demonstrated. The appeal has therefore not resulted in unnecessary expense for either applicant. In relation to both Application A and Application B, an award of costs is not justified.

*Helen Hockenhull*

INSPECTOR