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## Costs Decision

Site visit made on 16 August 2022

**by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

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

**Decision date: 12 September 2022**

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### **Costs application in relation to Appeal Ref: APP/D3125/W/21/3288375 Little Willow Oxford Road, Eynsham, Witney, OX29 4BT**

- 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 Elvis Price & Mrs Jill Hogget for a full award of costs against West Oxfordshire District Council.
  - The appeal was against the refusal of planning permission for non-compliance with condition 3 of Planning Permission 10/0813/P/FP to allow no more than 3 caravans (of which no more than two shall be a static caravan or mobile home) to be stationed on the site at any one time without complying with a condition attached to planning permission Ref 13/0190/P/S73, dated 1 February 2013.
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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. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failures to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicants submit that the Council has acted unreasonably as it has failed to clearly show why the development should not proceed and has not substantiated the reasons for refusal. Furthermore, the applicants consider that there was a failure on behalf of the Council to meet with them; a lack of consideration with regard to the best interest of the child; refusal to recognise the adjoining land under the control of the applicants; a failure to consider the comments from the Environmental and Regulatory Services Officer; and an exaggeration of the impact in relation to character and appearance; a refusal to accept the current situation in relation to flood risk and an erroneous claim surrounding highway safety.
5. The Council's reason for refusal set out in the decision notice is complete, specific and relevant to the application. It also clearly lists the relevant policies

of the West Oxfordshire Local Plan 2011-2031 (LP). I consider that the wording of the reasons for refusal do not represent unreasonable behaviour. The Council further supported their reasons for refusal with a full statement of case. The statement expanded on the reasons for refusal and the Officer Report, identifying the issues and described the reasons why the Council considered the proposal would conflict with the requirements of the LP.

6. Even if there was a reluctance to arrange a meeting by the Council, there is evidence of communication between the parties before the Council issued its decision. Whilst I accept that there are some misgivings surrounding the best interest of the child, the Council clearly acknowledge in its submission that children are present on the site and they featured in its assessment.
7. The Council also took into consideration the comments received from consultees, including the Highway Officer and the Environment Agency in reaching its decision. Even if the Council arrived at a different view to that of the Environmental and Regulatory Services Officer, I consider that the Council clarified its position clearly with regards to amenity in the Officer Report. Additionally, character and appearance is a subjective matter, which the Council has adequately substantiated in its submission.
8. It will be seen from my decision that I have been unable to reach a view on the above matters, due to the conflict with the *Finney* judgment<sup>1</sup>. However, the decision itself was a matter of judgement based on the evidence before the Council and they took into account the development plan. In this instance, I am satisfied that the Council adequately substantiated their reasons for refusal. In this case the appeal could not therefore have been avoided.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. As such, an award of costs is not justified.

*W Johnson*

INSPECTOR

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<sup>1</sup> John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868