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## Costs Decision

Site visit made on 23 January 2023

**by H Jones BA (Hons) DipTP MRTPI**

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

**Decision date: 2 March 2023**

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### **Costs application in relation to Appeal Ref: APP/P2935/W/22/3309772 Land South of Jubilee Cottages, U5028 Ridsdale to Hindhaugh, West Woodburn, Northumberland NE48 2RD**

- 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 Mark Winter for a full award of costs against Northumberland County Council.
  - The appeal was against the refusal of planning permission for siting of a 'Timber Living Trailer'.
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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 PPG goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Costs applications may relate to events before the appeal, and all parties are expected to behave reasonably throughout the planning process. However, for costs to be awarded, the unnecessary or wasted expense in the appeal should follow directly from the unreasonable behaviour whilst costs that are unrelated to the appeal are ineligible.
4. There may be some similarities in the content of the Council's pre-application responses<sup>1</sup>, the Officer Report on an earlier proposal<sup>2</sup> and a subsequent Appeal Decision<sup>3</sup>, and this may have arisen from one piece of written work forming, to some extent or other, the basis for another, but this in itself does not amount to unreasonable behaviour. I accept that any inaccuracies which have come about from such an approach, such as erroneous references to footpaths passing through a play area within the pre-application response on the appeal proposal, could be both perturbing to the appellant and, to some extent, undermine the content of that pre-application advice. Despite this, through both that pre-application response, and the Council's subsequent Officer

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<sup>1</sup> Costs Application Appendices CA and CB

<sup>2</sup> Costs Application Appendix CC

<sup>3</sup> Costs Application Appendix CD

- Report<sup>4</sup> (OR) on the planning application, the Council have been clear and consistent in their objection to the development proposed.
5. It has been put to me that the Council failed to act in a positive and proactive manner through a lack of adequate communication during the planning application process and given the application was the subject of delay. Although, on the basis of the evidence before me, the Council could have communicated more effectively by providing the applicant with more updates and some greater opportunity to respond on issues, and by explaining the reasons for delay, it is unlikely it would have resolved the Council's concerns with the proposal, altered the overall decision or even narrowed any issues.
  6. Whilst the Council may not have contacted the applicant so as to afford them opportunity to address the adoption of the Northumberland Local Plan, 2022 (LP) on 31 March 2022, the planning application was not refused until October that same year and I have no evidence before me to suggest that in the intervening period the applicant could not have provided further information to the Council if they deemed it would have been of benefit to their case. Even if the planning application for the proposed trailer had been determined earlier and prior to the adoption of the LP, the content of the Council's pre-application response was, nevertheless unsupportive of the proposal, and it is not clear from the evidence before me that the proposal would have been more compliant with the previous development plan. Furthermore, the LP was adopted within the statutory time limit for determination of the planning application.
  7. Therefore, despite some ineffective communication by the Council, the consistent objections toward the scheme from the Council are clear to me and the appeal would still have been necessary.
  8. Whilst neither the OR, nor the earlier pre-application advice on the appeal scheme may have expressly referred to the history of the proposed trailer, I have no substantive evidence before me that the Council have not had regard to such matters. Both the OR and the pre-application response set-out those planning matters with which the Council are satisfied and those to which they are not, and I find no undue imbalance therein.
  9. I note the applicant's concerns with the degree of balance in which the Council handled the planning application extend to questioning whether or not the application should have been determined at a planning committee and reference is made to their right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. The summary of Policies STP1 and ECN15 of the LP within the Chair Referral Report<sup>5</sup> does deviate from their precise wording, however, it is not clear to me that this was a strong influence in the Council's decision to determine the planning application under delegated powers. The planning application also drew some public support, but even so, no substantive evidence is before me that the procedure for determination chosen by the Council was incorrect or in any way constituted unreasonable behaviour.
  10. It will be seen from my Appeal Decision that I disagree with the Council that there were sufficient grounds for refusing planning permission due to the

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<sup>4</sup> Costs Application Appendix CH

<sup>5</sup> Costs Application Appendix CI

effects that the proposal would have upon the character and appearance of the countryside and the local landscape, inclusive of the effects upon dark skies. In doing so, I have also agreed with the appellant that final landscaping proposals could have been ensured by condition. However, and notwithstanding the evidence which accompanied the planning application, including the submitted Landscape and Visual Site Appraisal and Planning Statement, the assessment of such effects is one which is a matter of judgement. The opposing view, that the development would cause harm to the character and appearance of the countryside and the local landscape has been substantiated by the Council and I am satisfied that their concerns could not have all been overcome by imposing planning conditions. Therefore, and despite my conclusions being to the contrary, in coming to this view the Council acted reasonably.

11. The applicant has put to me that, when reading the development plan as a whole, the location of tourism accommodation in the open countryside is not sacrosanct and site accessibility should be balanced against the value of the site being attractively located. However, I have set out in my Appeal Decision the specific reasons when the LP supports camping, caravan and chalet development within accessible locations, that I have found this not to be the case in the appeal proposal, and why the development does conflict with the development plan as a whole. Very limited information is before me in regard to those cases where the applicant considers the Council have approved tourism development within inaccessible locations, and in such circumstances, I cannot draw accurate comparisons between the details of those cases and the appeal scheme, nor in turn conclude any unreasonable behaviours have been exhibited by the Council. In my findings that the development would conflict with the development plan and there being no material considerations, including the National Planning Policy Framework, of sufficient weight to indicate a decision other than one in accordance with the development plan, it follows that the Council's decision to refuse planning permission was not unreasonable.
12. Finally, it may be that the applicant has acted reasonably prior to submitting their planning application and during the planning application process itself, but this is not very relevant to my Costs Decision as I must determine whether or not the Council has acted unreasonably. There may also have been no objections raised as a result of the Council's consultation exercises, but this does not mean that the Council should have granted planning permission and acted unreasonably in not doing so.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*H Jones*

INSPECTOR