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## Costs Decisions

Inquiry Held on 14-15 and 17 February 2023

Site visit made on 16 February 2023

**by Thomas Hatfield BA (Hons) MA MRTPI**

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

**Decision date: 17<sup>th</sup> April 2023**

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### **Costs application in relation to Appeal Ref: APP/F4410/W/22/3310101 Former Blaxton Quarry, Mosham Road, Doncaster, DN9 3EJ**

- 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 the City of Doncaster Council for a full award of costs against Mr T Waddington of Ernest V Waddington Ltd.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for B2, B8, and E:g employment uses - 31,846 square metres for up to 52 units and parking.
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### **Decision**

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

### **Reasons**

2. 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.
3. The Council submits that the appellant has acted unreasonably in a number of respects. In this regard, it is contended that the appellant's interpretation of Policy 30 of the Doncaster Local Plan (2021) is unreasonable, that viability and ecological information were submitted late, and that there was a lack of co-operation in signing a s106 agreement. The Council also state that the appellant did not pay for its viability evidence to be appraised, and that earlier engagement on this matter could have shortened the Inquiry. Finally, it is submitted that unnecessary costs were incurred in dealing with the appeal via an Inquiry when the matters raised by the appellant could have been dealt with by way of a hearing.
4. With regard to the interpretation of Policy 30, the appellant has set out a detailed justification for its approach and substantiated this at the Inquiry. It has provided clear and detailed reasoning in support of its position in this regard. Whilst I came to a different view, the appellant did not act unreasonably in pursuing a different interpretation of this policy.
5. Regarding the purported lack of co-operation in relation to the s106 agreement, I note that this was ultimately agreed before the close of the Inquiry. Moreover, the appellant is not required to sign a s106 agreement, and it was open to the appellant to submit a unilateral undertaking instead, which

was the route it initially pursued. Whilst it is asserted that earlier agreement of the s106 would have allowed the separate resubmission application to be approved, that application is not within my remit. In any event, that would not have addressed the appellant's primary case (that the biodiversity offsetting contribution is unnecessary) and so would not have avoided the appeal.

6. In terms of the submission of late evidence in relation to both viability and ecology, I accepted these partly on the basis that there was sufficient time for the Council to respond before the Inquiry opened. The submission of late evidence during the appeal process is allowed for under certain circumstances and it was not unreasonable for the appellant to submit this information in support of its secondary case. Moreover, the ecological information appended to Mr Northrop's proof of evidence helped to narrow the areas of dispute and saved Inquiry time.
7. Turning to the late viability information, this was submitted only a short time after the submission of the appellant's statement of case, and well in advance of the opening of the Inquiry. Whilst Local Plan Policy 66 states that viability submissions should be appraised at the applicant's expense, in this case a formal appraisal including negotiation / discussion on the various assumptions did not occur. Moreover, even if it had, then it would not have prevented further viability information being submitted with the appeal which the Council would have had to address. In my view, no extra expense for preparatory work was incurred by virtue of this evidence being submitted late.
8. The decision as to which procedure the appeal follows is ultimately determined by the Planning Inspectorate. In this case, both main parties were informed that the appeal would follow the inquiry process in order to cover both viability issues and the difference of approach in the reading of the development plan. It was considered that these would be better dealt with by cross-examination. In my view, an Inquiry was necessary to cover these matters and no unnecessary or wasted expense has therefore been incurred.
9. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Thomas Hatfield*

INSPECTOR