



## Costs Decision

Hearing held on 23 May 2023

Site visit made on 23 May 2023

**by Luke Simpson BSc MSc MRTPI**

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

**Decision date: 7 July 2023**

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### **Costs application in relation to Appeal Ref: APP/D0515/W/22/3306697 Block Fen Stables, Block Fen Drove, Wimblington PE15 0FB**

- 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 M Crossley for a full award of costs against Fenland District Council.
  - The appeal was against the refusal of the Council to grant planning permission for Erection of 3-Bed detached bungalow with attached double garage together with erection of stable block without complying with condition 5 attached to planning permission Ref F/YR01/1120/F, dated 16 January 2002.
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### **Decision**

1. The application for a full award of costs is refused.

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, 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. On procedural grounds the applicant contends that the Council's approach to the appeal proposals amounts to a complete re-consideration of the original application, contrary to the advice contained within the PPG. However, in the Decision Letter I conclude that Condition 5 was imposed to allow the dwelling as an 'exception' in circumstances where it would otherwise have conflicted with the development plan at that time. I note that, during its consideration of the planning application subject of the appeal, the Council considered whether the development would accord with the current development plan policies in relation to the principle of development. These policies have superseded those in place at the time that the 2002 Permission<sup>1</sup> was granted.
4. This was the correct approach and accords with the advice contained within the PPG<sup>2</sup> that applications under Section 73 of the Town and Country Planning Act 1990 (as amended) should be considered in accordance with the statutory test at Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended). Indeed, that is the basis upon which I considered the appeal. As such, the Council did not act unreasonably.

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<sup>1</sup> LPA Ref: F/YR01/1120/F

<sup>2</sup> Paragraph: 019 Reference ID: 17a-019-20140306 Annex A

5. In substantive terms, the applicant also asserts that the Council has afforded little or no weight to the 2005 appeal decision<sup>3</sup> when considering the current S73 application and this appeal. However, the 'weight' to be attributed to the conclusions of the Inspector in the 2005 appeal is a matter of judgement having regard in part to the current circumstances.
6. In my Decision Letter I found that the conclusions reached by the Inspector in the 2005 appeal decision were relevant to the main issue of this appeal. However, I concluded that the site-specific circumstances have changed significantly since that appeal was determined, with a bungalow (approved under the 2007 permission) now built and subject to a planning obligation. As such, the suppositions of the Inspector with regard to future development and applications for development on the appeal site have been superseded by the events that have occurred since he issued his decision in 2005. Furthermore, based on the evidence before him, he found that there would have been a 'distinct possibility' that two dwellings would be constructed were he to allow the appeal, even taking into account the potential for a planning obligation to restrict that possibility from coming to fruition.
7. Based on the evidence before me and the case-specific circumstances (which have changed significantly since 2005), I reached the opposite conclusion. Indeed, the Decision Letter is clear that I consider it extremely unlikely that the dwelling approved under the 2002 permission will be constructed. For that reason alone, I found that the conclusions of the Inspector in the previous appeal did not alter my findings. In addition, the appeal decision was issued in a completely different planning policy context, with new national and development plan policies adopted since 2005.
8. For these reasons, even if it did attribute 'little or no weight' to the 2005 appeal decision, the Council did not act unreasonably.

### **Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. As such, the application for an award of costs is refused.

*Luke Simpson*

INSPECTOR

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<sup>3</sup> PINS reference: APP/D0515/A/04/1152543