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## Costs Decision

Hearing held on 8 August 2023

Site visit made on 7 and 8 August 2023

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

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

**Decision date: 15<sup>th</sup> September 2023**

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### **Costs application in relation to Appeal Ref: APP/U4610/W/23/3319687 A444 Land at Wilsons Lane, Coventry, CV6 6HN**

- 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 L&Q Estates Ltd for a full award of costs against Coventry City Council.
  - The appeal was against the refusal of outline planning permission for the demolition of existing buildings and the erection of up to 73 dwellings and up to 55,750 sqm of employment/commercial floor space (comprising of 50,000 sqm of B8 use (including 2,500 sqm ancillary E(g)(i) office) and 5,750 sqm of B2/B8/E(g)(iii) uses (including 300 sqm ancillary E(g)(i) office)), complete with access, local area for play (LAP), land remodelling, landscaping, attenuation and the diversion of the Public Right of Way (REF B25) with all matters reserved except for access.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **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. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
3. The PPG states<sup>1</sup> 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; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a ground capable of being dealt with by conditions and where it is concluded that suitable conditions would enable the proposed development to go ahead.
4. The Council refused the application for reasons relating to highway safety and living conditions, contrary to the recommendations of its officers. The Council is not duty bound to follow the advice of its professional officers. However, if a

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<sup>1</sup> Paragraph 049 Reference ID: 16-049-20140306

different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The Council's refusal reason on its decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan which it would be in conflict with, and cites conflict with the National Planning Policy Framework. It also refers to the National Design Guide. An appeal statement has also been submitted to support these reasons for refusal.

5. Nonetheless, the application subject of this appeal has benefitted from a substantial amount of supporting technical evidence, which resulted in the support of the planning application from the Council's professional officers. I accept that local knowledge is also important in the determination of planning applications, but given the technical evidence has been produced by suitably qualified authorities, and in the absence of equivalent evidence to the contrary on the part of the Council, I have given this significant weight.
6. Additionally, whilst the Council disregarded the recommendations of its officers, paragraph 48 of the PPG also advises that the refusing of planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. During discussions at the event, it became apparent that additional wording/condition could be provided to that originally proposed in suggested Condition 20 vii), which would address the concerns raised in the Council's refusal reason.

### **Conclusion**

7. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Coventry City Council shall pay to L&Q Estates Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Coventry City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*W Johnson*

INSPECTOR