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## Costs Decision

Site visit made on 14 November 2023

**by A Berry MTCP (Hons) MRTPI**

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

**Decision date: 17 January 2024.**

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### **Costs application in relation to Appeal Ref: APP/J1535/W/23/3319839 Barclays Bank Plc, 6 Market Square, Waltham Abbey, Essex EN9 1DN**

- 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 Hansson Holdings Ltd for a full award of costs against Epping Forest District Council.
  - The appeal was against the refusal of planning permission for the redevelopment of the former Barclays Bank to mixed use development including upward extension by way of an additional storey at roof level, retaining commercial use on the ground floor and creating a 1no duplex 3 bed flat across first and second floors above the commercial space with entrance at street level.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the 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 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 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; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The application relies on the fact that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and they relied on inaccurate assertions about the proposal's impact which are unsupported by any objective analysis or evidence.
5. The Council refused the proposal on the proviso that the proposed waste storage area was unworkable and unsafe for operatives and their vehicles during the collection of waste. This was despite the Council's Area Waste Management Officer ('the AWMO') confirming that commercial bin collections currently take place within Market Street/Sun Street on market day, and they raised no objection to the collection of waste from the site. Most notably, it was

the AMWO who suggested the proposed location for the bin storage area in a pre-application response<sup>1</sup>.

6. I appreciate that Members of the planning committee are entitled to not accept the professional advice of its officers. However, this is only if a case can be made for the contrary view. While Members disagreed with the AMWO's view, this was based on generalised assertions and unevidenced assumptions. Therefore, the Council's position without any reasonable justification, amounts to unreasonable behaviour. Furthermore, following consideration of the appeal on its own merits, I have found that the bin storage area's location would not be unworkable or unsafe. Therefore, had Members of the planning committee accepted the professional advice of their officers, this could have meant that an appeal was unnecessary, and the costs associated with the appeal could have been avoided.
7. The applicant could have sought post application advice and submitted a revised application to overcome the reason for refusal. However, the applicant was entirely within their right to appeal the Council's decision if they considered the development complied with the development plan. Furthermore, the applicant considered alternative locations for the bin storage area within their planning application submission and in pre-application discussions, including to the rear of the premises, and detailed why these would not be appropriate or feasible. Therefore, it is unlikely that a revised planning application could have overcome the Council's reason for refusal.
8. Consequently, the Council prevented development which should have clearly been permitted and failed to produce evidence to substantiate its reason for refusal, instead relying on vague and generalised assertions. In doing so, the Council acted unreasonably and caused the applicant to incur unnecessary and wasted expense in the appeal process.

## **Conclusion**

9. For the reasons given above, I find that unreasonable behaviour by the local planning authority, resulting in unnecessary and wasted expense as described in the PPG, has been demonstrated and a full award of costs is justified.

## **COSTS ORDER**

10. 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 Epping Forest District Council shall pay to Hansson Holdings Ltd, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Epping Forest District 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. In the event that the parties cannot agree on the amount, such costs shall be assessed in the Senior Courts Costs Office.

*A Berry*

INSPECTOR

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<sup>1</sup> Email dated 28 June 2021 from the AMWO to Kathryn Camilleri of Studio KMC