

---

## Costs Decision

Site visit made on 29 May 2024

**by Timothy C King BA(Hons) MRTPI**

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

**Decision date: 16<sup>th</sup> July 2024**

---

### **Costs application in relation to Appeal Ref: APP/J1535/W/23/3334925 Chigwell Nursery, High Road, Chigwell, Essex IG7 5BL**

- 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 M Scott Properties Ltd for a full award of costs against Epping Forest District Council.
  - The appeal was against '*Demolition of existing buildings and construction of residential dwellings (Class C3), alterations to existing access, landscaping and associated works*'
- 

### **Decision**

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

### **Reasons**

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance indicates that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate its reasons for refusal on appeal.
3. This application is being made on both procedural and substantive grounds, although there is some crossover between the points put forward on each.
4. In essence, the appeal site, following years of formulation and negotiation, is an allocated site for new housing as set out in the development plan, adopted in March 2023. The planning application was submitted following extensive discussions and was informed by the views and comments of the Council's Quality Review Panel.
5. I acknowledge that the Council is not bound by the outcome of pre-application discussions, but I must also weigh up that the number of dwelling units and proposed density is in accordance with the criteria for allocated site CHIG R5 and, although subject to local consultation, the circumstances should have reasonably given the applicant some degree of certainty in moving forward.
6. Instead, despite a recommendation to grant planning permission for the scheme – which I found to be well presented in terms of the substantial amount of supporting material, helpfully assisted by visuals and illustratives – the planning committee resolved to refuse permission on the basis of reasons which, when weighing up the scheme's merits and impacts, I consider were, in the main, very thin and unsubstantiated.

7. The Council is, of course, entitled to come to any decision it feels fit but, in this particular instance there was very little written material for the Council to put together a convincing rebuttal of the appellant's case. In the circumstances I felt sympathy for the Council's witnesses who were faced with a difficult task given the comments in the comprehensive committee report which was apparently written with the scheme supported by statutory external consultees and also internal advice as to the issues involved. Merely saying that the wording of the reasons for refusal relating to the character & appearance and amenity issues were precise and unambiguous, without proper explanation, is indicative of the difficult task the Council witnesses were faced with.
8. Nonetheless, I consider that the witnesses put forward the best case possible in the circumstances.
9. Admittedly, the effect on the setting of the statutorily listed Little West Hatch building was more contentious and subjective, and I could understand its owner's concerns given the physical changes that would result from the development. Even here, however, perhaps more heed should have been taken of the conservation officer's comments which informed the committee report.
10. An unfortunate consequence of the above was that the Council witnesses were faced with the additional difficulty of countering the application for an award of costs.
11. In summary, and especially because that this is a site identified in the recently adopted development plan to assist towards the Council reaching its housing expectations, and that the scheme's merits firmly outweigh the considered impacts, I consider that the appeal could have reasonably been avoided.
12. Accordingly, I must conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated and that a full award of costs is justified in the circumstances.

### **Costs Order**

13. 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 M Scott Properties 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. 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.

*Timothy C King*

INSPECTOR