



## Costs Decision

Hearing held on 31 July 2024

Site visit made on 30 July 2024

**by Ben Plenty BSc (Hons) DipTP MRTPI**

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

**Decision date: 07 August 2024**

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### **Costs application in relation to Appeal Ref: APP/P1615/W/24/3338398 Land east of Perrygrove Road and South of Tufthorn Avenue, Perrygrove Road, Coleford, Gloucestershire GL16 8QB**

- 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 Forest of Dean District Council for a partial award of costs against NNA Ltd.
  - The appeal was against the refusal of planning permission for the delivery of 2 x restaurants with takeaway and drive through, along with the construction of associated infrastructure.
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### **Decision**

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

### **The submissions for Forest of Dean District Council**

2. The Council's costs application was submitted in writing. The Council asserts that as the Appellant submitted a new planning application this demonstrated an acceptance that the refused scheme was deficient, and that insufficient information had been provided. An opportunity was given to the Appellant to withdraw the appeal to avoid the risk of a costs application being made, but this was not taken.
3. Accordingly, the Council contends that;
  - if the Appellant did not withdraw the appeal, at the time of making a second application, the ongoing preparation for the appeal would result in unnecessary and wasted expense, and
  - in submitting new information as part of the appeal evidence, the Appellant has behaved unreasonably and would be contrary to the Planning Inspectorate's Procedural guidance, by evolving the scheme during the appeal process. The additional information was not subject to public consultation and therefore was not seen by the public or planning committee, resulting in procedural unfairness.
4. The following additional point was made orally;
  - As the Inspector has decided to take into account the evidence submitted in regard to ecology and highways, the Council has adjusted its claim to a partial award.

## **The response by NNA Ltd**

5. The response was made orally at the hearing. The Appellant asserted that;
- there was no guarantee that the second scheme would be approved if the appeal was withdrawn, and
  - it is not unusual for an applicant, to a planning application, to seek to address reasons for refusal through the submission of a new application.

## **Reasons**

6. 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.
7. The first application (the scheme subject to the appeal) was refused with four reasons for refusal (RfR). A second application, for a similar scheme, was made in an attempt to resolve the Council's concerns and was accompanied by additional/new supporting information. These details resolved the concerns of the Highway Authority, and the second scheme was refused without the highway related RfRs. Although ultimately the second scheme was unsuccessful at resolving all concerns, it demonstrated some progress towards a positive outcome.

### *Failure to withdraw the appeal*

8. The applicant suggests that the second scheme was made to avoid the need for an appeal. Had the second scheme been approved there seems to have been little reason for the Appellant to continue appealing. Therefore, withdrawing the appeal without an approval, would have been commercially inappropriate for the Appellant. Consequently, I see nothing procedurally unfair about this approach to bring development forward on a site.
9. Furthermore, the appeal would only become redundant had the Council approved the second scheme, as it did not the appeal was not withdrawn and the Council's preparation for the appeal was not unnecessary or wasted. As a result, the Appellant's refusal to withdraw the appeal, upon the submission of the second scheme was not evidence of unreasonable behaviour.

### *Submission of new evidence*

10. The Inspectorate's Procedural guidance discusses an Inspector's approach to dealing with amended plans once an appeal has been made. Section 16 explains that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially the same scheme that was considered by the LPA and interested parties at the application stage. The guidance then explains that any amendments will be tested against the '*Holborn Studios Ltd v The Council of the London Borough of Hackney*' judgement. This requires consideration as to whether the changes are substantial and whether accepting them would cause procedural unfairness.
11. The appeal scheme, and the second scheme, were submitted as two separate planning applications. However, it is clear that the second flowed from the first,

adding to information that had been provided for the first scheme. I am unconvinced that the second scheme has 'evolved' the proposal for the purposes of section 16, as the proposal itself has not materially changed. Furthermore, even if it was found that the scheme had evolved through the provision of additional supporting information, I have not found the details provided to be substantive.

12. Also, in terms of the highway matters, the second scheme was subject to the Council's published consultation process, and this resulted in no community objection. It also gained no objection from the Highway Authority. It is unclear whether the second scheme was reported to Planning Committee for refusal. However, this could have been undertaken, as part of the assessment of the proposal, if deemed necessary by officers. This demonstrates that the second scheme, and its accompanying details, were subject to full consultation and notification. It therefore causes no procedural unfairness for me to take these details into account with respect to the current appeal.
13. The submission of the additional ecological information the day before the Hearing was extremely unfortunate timing. However, this resulted from ongoing discussions with the Council's ecologist to attempt to resolve RfR2 before the Hearing. As the details were of a technical nature and only added layers of new information to established ecological survey work, I see no evidence that taking this new information into account would cause procedural unfairness.
14. The procedural guide also requires, at section 13, for the Appellant and Council to collaborate on a Statement of Common Ground. Such a statement is required to ensure that the evidence considered at the Hearing focuses on the areas of disagreement between the Appellant and the LPA. This presented the Council with an opportunity to acknowledge that the highway matters had been resolved by the details submitted in support of the second scheme.
15. As a result, it was not unreasonable for the Appellant to submit additional highway and ecological details, that were a product of constructive conversations with the Council. These provided new and important material considerations in association with the appeal proposal. Accordingly, the chronology of events and actions taken by the Appellant are not deemed to be unreasonable.

## **Conclusion**

16. Consequently, it has not been demonstrated that there was unreasonable behaviour on the part of the Appellant that led the Council to incur unnecessary or wasted expense. I conclude accordingly that an award of costs, as described in the PPG, has not been demonstrated.

*Ben Plenty*

INSPECTOR