



## Costs Decision

Hearing held on 17 April 2024 and 12 July 2024

Site visit made on 12 July 2024

**by Mark Caine BSc (Hons) MTPL MRTPI LSRA**

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

**Decision date: 09 September 2024**

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### **Costs application in relation to Appeal Ref: APP/M0655/W/23/3329902 Land south of 2 Cuerdley Road, and west of Cuerdley Road, Penketh WA5 2TY**

- 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 Warrington Borough Council for a full award of costs against Messrs Z and D Tourney.
  - The appeal was against the refusal of planning permission for a residential redevelopment of land for between 5no. and 9no. affordable dwellings following demolition of existing buildings, together with associated infrastructure works and access(es) onto Cuerdley Road.
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### **Decision**

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

### **The submission and responses**

2. The application for costs was made in writing at the resumed Hearing. Due to time constraints on the day, the main parties agreed to make responses to this in writing after the resumed Hearing had closed. There is therefore no need to rehearse the cases of the parties.

### **Reasons**

3. 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.
4. The PPG gives examples of unreasonable behaviour which may result in an award of costs against an appellant. A procedural award may be made where (and the list is not exhaustive) there has been delay in providing information or other failure to adhere to deadlines, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. This application for an award of costs relies to a substantial extent on the appellants' late submission of evidence and introduction of new material outside of the timetable for the appeal. Nonetheless, this submission predominantly related to the adoption of the Warrington Local Plan 2021/22-2038/39 (the Local Plan) and the replacement National Planning Policy Framework in December 2023. These came into force after the appellants had submitted their original statement of case and therefore related to a change in circumstances that occurred after the appeal was submitted.

6. Furthermore, it is for the Council to alert the Planning Inspectorate in writing, as soon as possible, of any newly adopted policies that are relevant to an appeal. This did not happen. This evidence was also introduced well before the adjourned Hearing date and therefore should not have necessitated an adjournment, or extra expense in preparatory work that would not otherwise have arisen.
7. Moreover, an appeal decision must be made taking into account national and local policies, and the broader circumstances in place at the time of the decision. I am satisfied that the appellants' supplementary evidence had to be considered as it was relevant at the time of making the appeal decision. Whilst it was lengthy, and some of it related to information that was published after the Council submitted its original statement of case, in the interests of fairness, the Council was given the opportunity to comment and respond to this. As such I find that the appellants have not behaved unreasonably in any of these respects.
8. The appellants' evidence and arguments regarding Local Plan Policies DEV1 and DEV2 may also have previously been defended as a part of the examination process for the Local Plan. Nonetheless, questioning these policies does not constitute unreasonable behaviour. The tone and language used in the appellants' correspondence could have been improved in some instances, however I do not deem this to have been overly aggressive or threatening. Accordingly, and for the reasons given above, I do not consider that the expense incurred by the Council in defending its case to be a result of unreasonable behaviour by the appellants.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and that an award of costs is not justified.

*Mark Caine*

INSPECTOR