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## Costs Decision

Site visit made on 20 August 2024

**by K Savage BA(Hons) MPlan MRTPI**

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

**Decision date: 17 September 2024**

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### **Costs application in relation to Appeal Ref: APP/W3005/W/24/3338235 Former Garage Court and Allotments, off Lime Avenue, Huthwaite, Notts**

- 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 Mr & Mrs Tom and Iris Leah for a full award of costs against Ashfield District Council.
  - The appeal was against the refusal of planning permission for an outline application with all matters reserved for residential development.
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### **Decision**

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

### **Reasons**

2. 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. The applicants' claim relates to both reasons for refusal.

#### *Reason for Refusal 1*

3. The applicants set out that the first reason for refusal, relating to the harm to protected species, was unfounded as none of the findings or recommendations in the Preliminary Ecology Assessment (PEA) suggested the principle of development was not acceptable, and no concern was raised by Natural England (NE). Further surveys could have been requested by condition. The applicants also criticise the Council for not raising the need for further survey work in the 69 weeks the application was under consideration.
4. The Council in response states that the first reason for refusal was sound, pointing to the fact that bats are a protected species in law<sup>1</sup>, and that the Council, as an appropriate authority under the Habitats Regulations<sup>2</sup>, has a duty to comply with the requirement of the Directives in exercising its functions. This includes being satisfied that actions authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range, such that a licence can be granted under Regulation 55.
5. The Council highlights the comments made in the PEA where it is stated that further survey work is required, that the PEA highlighted the relevant legislation with which the applicants should have familiarised themselves, and

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<sup>1</sup> Wildlife and Countryside Act 1981

<sup>2</sup> The Conservation of Species and Habitats Regulations 2017

that the applicants have misinterpreted the findings of the PEA and the comments of NE, which were unrelated to protected species.

6. It will be seen from my main decision that I agree with the Council's position. The applicants may view 'one lonesome bat' as inconsequential, but relevant legislation and guidance places a strict duty on decision makers to be satisfied that harm to protected species can be avoided. Here, the applicants have failed to acknowledge the clear statements of their own PEA that further surveys were required '*to ascertain the status of the bat roost in this building,*' and that once this was established, '*further advice relating to mitigation and the requirement for an EPS licence will be provided.*' In my view, this is far from a statement of certainty, or even confidence, that no harm would be occasioned to protected species, but an interim finding requiring further investigation. The PEA is produced for the applicants in the first instance, and it was for them to digest and satisfy themselves as to any further action required.
7. Moreover, the applicants have persisted in claiming support from NE despite the Council's clarification that its comments related only to *protected nature conservation sites and landscapes*. This was not an endorsement of the proposal by NE.
8. In my reasoning, I make clear that the level of information falls short of that required to be satisfied that no harm would arise to any species protected by law. The Council's reason for refusal was therefore justified and it has substantiated its position at appeal. Matters relating to correspondence, or lack thereof, during the application are for local government accountability, but in terms of the appeal, I make no finding of unreasonable behaviour.

#### *Reason for Refusal 2*

9. The applicants argue that the Council and highway authority failed to have proper regard to the evidence provided in respect of highway safety, including traffic surveys, proposed highway improvements and, most notably, the past and potential alternative uses of the site. The Council is also criticised for refusing permission despite not knowing how much traffic the scheme would generate. It is put forward that a more positive approach to the application by the Council would have garnered a recommendation for approval, as no weight should have been given to Policies ST1 and HG5e of the Ashfield Local Plan Review (2002) and it was not possible to determine that the proposal would have had an unacceptable impact on highway safety, or a severe cumulative impact on the road network. The appellants also point to the additional work required at appeal stage to attempt to address the highway authority's concerns.
10. The Council states that its delegated report makes clear reference to the past use of the site, and that its judgement on the quantum of development was reasonable given the applicants submitted an indicative site plan and the transport assessment was undertaken with reference to it. The Council adds that both it and the local highway authority have worked with the applicants and solutions identified, but the applicants have not taken these forward.
11. In this matter, I have found that the proposal would be acceptable. However, this involved planning judgement having regard to the evidence before me,

including my site visit. The weight to be afforded relevant development plan policies and various considerations, including the site history, were also matters of planning judgement. The Council has provided reasons to underpin its position at appeal. Whilst I have not agreed with the Council in my main decision, I find it has substantiated its position in respect of this issue.

12. Overall, the planning judgement required to balance the facts of the case in both reasons for refusal demonstrates that the Council did not refuse development that should clearly have been permitted. Moreover, given that an appeal was necessary to address the matters at issue, it follows that the applicants have not been put to wasted expense in making the appeal.

### **Conclusion**

13. For these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated, and an award of costs is not justified. No award is therefore made.

*K. Savage*

INSPECTOR