



## Costs Decision

Hearing held on 1 August 2024

Site visit made on 1 August 2024

**by C Shearing BA (Hons) MA MRTPI**

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

**Decision date: 18 September 2024**

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### **Costs application in relation to Appeal Ref: APP/Z1510/W/24/3341618 Halstead Hall, Braintree Road, Halstead CO9 1SL**

- 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 R Catchpole of Stow Healthcare Group Ltd for a full or partial award of costs against Braintree District Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for development described as 'outline application for the erection of 34 dwellings (including 24 market units and 10 social affordable units) with permission sought for access and layout'.
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### **Decision**

1. The application for 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.
3. The applicant has put forward two scenarios for the costs application. The first being an application for full costs on a procedural basis and, alternatively, a partial award of costs on a substantive basis arising from the imposition of two of the putative reasons for refusal. These shall be discussed in turn.
4. The outline planning application which was the subject of the appeal experienced significant delays during its determination, having been set an original target date for determination of 21 March 2023 and most recently extended with the applicant's agreement to 2 October 2023. The applicant has demonstrated that multiple attempts were made to engage with the Council during the application period with little or no response. Correspondence from the Council referred to intended Committee dates, although these dates subsequently came and went, leaving the applicant feeling no other option was available but to appeal against non-determination.
5. The applicant did not receive explanation for these delays and the Council's conduct was heavily at odds with the spirit of the PPG which makes clear that the local planning authority should give a proper explanation where they will fail to determine an application within the time limits. Neither is it apparent that the acceptance of revised drawings and documents, nor the need for specialist advice, would necessitate such a significant delay.

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6. The PPG acknowledges that a lack of co-operation and failure to adhere to deadlines fall among those examples of unreasonable behaviour which may result in an award of costs. Given the circumstances described above, the Council displayed unreasonable behaviour during the course of the planning application.
  7. The applicant was not aware of the Council's concerns prior to the appeal being lodged. However, given the nature of the putative reasons for refusal, it is not apparent that they were capable of being adequately addressed before the application was determined, even if the Council had communicated them sooner. It is not apparent, therefore, that the appeal could have been avoided altogether.
  8. The costs incurred by the applicant by lodging the appeal included hiring professional consultants to represent their case. Nonetheless, these consultants would have needed to engage in the process anyway to address the Council's concerns, regardless of the appeal. The decision by the applicant to engage additional support for the appeal process is not considered to be unreasonable expense which arose from the Council's behaviour.
  9. Turning to the substantive issues, the applicant alleges that two of the putative reasons for refusal could have been dealt with by condition. This concern relates to those reasons 3 and 4 given by the Council, which refer to effects on ecology and the need for a legal agreement to secure planning obligations.
  10. In respect of ecology issues, the Council were clear in the hearing that, while conditions had been drafted on this matter, it did not support the principle of this approach and remained of the view that the information required should be provided prior to the grant of any planning permission. The Council substantiated this approach and, for this reason, it is not apparent that the third reason for refusal was one which was necessarily capable of being dealt with by condition.
  11. The fourth reason for refusal relates to the need for a legal agreement to secure planning obligations. The Council provided evidence during the course of the appeal to substantiate those requests including reference to development plan policies and supplementary planning documents. Based on the evidence, the Council did not have such a legal agreement during the application process which would have avoided the need for it to form a reason for refusal. Neither is it apparent that this matter was capable of being dealt with by a planning condition, given the advice contained in the PPG surrounding the use of conditions for this purpose.

## **Conclusion**

12. For the reasons given, while the Council's behaviour during the course of the planning application was unreasonable, for the reasons given this has not caused the applicant to incur unnecessary or wasted expense in the appeal process, as set out in the PPG. The application for costs is therefore refused.

*C Shearing*

INSPECTOR