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## Costs Decisions

Hearing held on 15 October 2024

Site visits made on 11 June, 9 July and 15 October 2024.

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

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

**Decision date: 11 December 2024**

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### **Appeal A:**

**Costs application in relation to Appeal Ref: APP/R1038/W/23/3324560  
Land South of Hallfieldgate Lane, Shirland, Derbyshire, DE55 6AA**

- 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 Trustees of Ted Speed and Pauline Speed Hallfield Trust for a full award of costs against North East Derbyshire District Council.
  - The appeal was against the refusal of to grant planning permission for up to 90 new residential units and site access without complying with conditions attached to planning permission Ref 19/00335/OL, dated 22 January 2021.
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### **Appeal B:**

**Costs application in relation to Appeal Ref: APP/R1038/W/23/3324561  
No.43 Hallfieldgate Lane, Shirland, Derbyshire, DE55 6AA**

- 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 Friar 2019 Ltd for a full award of costs against North East Derbyshire District Council.
  - The appeal was against the refusal of planning permission for proposed footway extension to the north side of No.43 Hallfieldgate Lane, Shirland.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the Guidance) 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. Although both appeals have some issues in common, in respect of this Costs Decision I will initially address them separately, but will then turn to procedural matters.

### **Appeal A – S.73**

#### ***Highway Safety***

4. The Council's first reason for refusal in respect of Appeal A related to highway safety. It refers to the formation of a new access in a location with poor visibility and the creation of a virtual crossroads. However, the appellants have

provided a detailed Transport Assessment which concluded that visibility splays can be provided in accordance with the Manual for Streets methodology. The proposal would create a junction relatively close to another on the opposite side of Hallfieldgate Lane, but the Council has not substantiated its concerns on this issue, particularly given the lack of objection from the Local Highway Authority (LHA)

5. The Council's reason for refusal on this issue also questions whether the Transport Assessment submitted at the application stage was up to date, and reference has been made to recent residential development in the area. However, the Council's concerns on this issue were not based on robust reasoning in respect of the scale of recent residential development and the effect on the highway network. This should also be viewed within the context of a lack of objection from the LHA.
6. On receiving an updated Transport Assessment and Road Safety Audit as part of the appeal, the Council has confirmed that it does not take issue with the technical aspects of the Assessment (such as junction design and geometry). But it has not justified why these conclusions could not have been reached on the evidence submitted with the application.
7. The Council has continued to express concerns on various aspects of highway safety; including on-street parking and the effect on carriageway width, limited visibility, the proximity of Lilac Way, and evidence from local people about minor accidents. But these concerns are only set out in general terms, and do not represent a robust rebuttal of the evidence provided by the appellants. Furthermore, during the course of the appeal, the LHA maintained its stance that it does not object to the proposal.
8. While planning committee members are not bound by the recommendations made to them by Council officers or consultees, highway safety is a technical matter and any departure from the advice of officers and consultees should be robustly justified.
9. I am therefore of the opinion that the refusal of planning permission in respect of highway safety on Appeal A was ill-founded, and that the decision was based on vague and inaccurate assertions unsupported by an objective analysis of the evidence available prior to the planning application's determination. I therefore consider that the reason for refusal on the grounds of highway safety amounted to unreasonable behaviour with regards to the Guidance.

#### *Character and Appearance*

10. The appellants submit that the Council does not include any objective technical landscape and visual impact evidence on this issue. However, in this case, the evaluation of character and appearance is primarily an exercise in planning judgement. I am also mindful that the plans originally submitted by the appellants in respect of Appeal A indicated that significant extends of exposed retaining structures would be visible around the access. Given that evidence, the Council could not have expected its concerns to have been addressed as part of the consideration of the Reserved Matters.
11. On the basis of the evidence available to the Council at the time it made its decision, I consider that its concerns on the issue of character and appearance were justified.

12. In respect of concerns regarding a protected tree, the arboricultural evidence is not as clear cut as is indicated by the appellants. The appellants' arboricultural evidence refers to potential technical solutions to address detrimental impacts on the tree, but these are of a non-specific nature and there is no certainty that they would be successful. In comparison, the evidence of the Council's Arboricultural Officer was robust and thorough in expressing concern about the effect of the proposal on this tree. Although I have allowed the appeal, this is only on the basis that it is the 'least worst' option compared to a fallback scheme which may lead to harm to 2 protected trees. The consideration of the harm to the protected tree is in effect a planning balance, and I do not consider that the Council has behaved unreasonably in reaching its conclusion on this issue.
13. In conclusion on the matter of character and appearance in respect of Appeal A, I do not consider that the Council has behaved unreasonably in its consideration of this issue.

#### Appeal B – No. 43

14. The sole reason for refusal of Appeal B relates to the issue of character and appearance. In comparison to Appeal A, the plans before the Council in respect of Appeal B provided sufficient information to indicate the nature of the appeal proposal.
15. However, the proposal would lead to the extension of a footway on the edge of the village, leading to an engineered feature projecting onto a grassed verge with the associated loss of hedging and non-protected trees. The appellants have provided detailed evidence on this issue, but the consideration of character and appearance in respect of Appeal B is basically a matter of planning judgement. Although I have allowed the appeal, the Council's conclusions on this issue were not so unfounded or without substantiation as to represent unreasonable behaviour.

#### Procedure

16. Both appeals were initially to be determined via written representations. However, insufficient evidence had been provided on a number of issues to enable me to consider the appeals; including in respect of site levels as well as the design of embankments and barriers. It was not possible to address these issues at the site visits and I therefore changed the appeals procedure to a Hearing. I raised this matter at the Hearing, and I have had regard to the comments made.
17. The uncertainty on these issues was not the Council's responsibility. Although I am mindful that the Hearing has led to extra costs to the appellants in respect of both appeals, it would not be appropriate to award these costs against the Council as the need for the Hearing arose due to matters beyond its control.
18. There was also some uncertainty about the status of the tree potentially affected by Appeal A. The Council has subsequently sought to address this by issuing a further Tree Preservation Order (TPO). However, the tree is part of an important landscape feature, and I would have considered the effect of the proposal on it in any event. Evidence was provided by both main parties as part of the initial appeal process, and even allowing for the recently issued TPO, I consider that Appeal A could have progressed via written

representations. Although further clarification was provided at the Hearing in respect of this protected tree, the uncertainty about its status taken by itself would not necessarily have led to a Hearing.

19. As the reasons for the Hearing related to matters beyond the Council's control, I consider that any award of costs should relate only to the written representations stage and not the Hearing process.

### Conclusion

20. Notwithstanding my conclusions in relation to the consideration of character and appearance in respect of Appeal A and Appeal B, I conclude that in respect of Appeal A that the Council has behaved unreasonably in respect of its consideration of highway safety, with the result that the applicants have directly incurred unnecessary and wasted expense in addressing this issue.
21. Having regard to the provisions of the Guidance, a partial award of costs in respect of Appeal A is therefore justified. However, for the reasons stated previously this should be limited to costs incurred during the written representations stage of the appeal.

### **Costs Order**

22. 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 North East Derbyshire District Council shall pay to Trustees of Ted Speed and Pauline Speed Hallfield Trust, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing highway safety in respect of Appeal A as part of the written representations stage of the appeal process; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to North East Derbyshire District Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*David Cross*

INSPECTOR