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## Costs Decision

Site visit made on 13 January 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2025

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### **Costs application in relation to Appeal Ref: APP/K2420/W/24/3347640**

#### **Poplar Cottage, Little Shaw Lane, Markfield, Leicestershire LE67 9PP**

- 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 Nathan Proud for a full award of costs against Hinckley and Bosworth Borough Council.
  - The application Ref is 24/00021/FUL.
  - The appeal was against the part change of use of site to retail to allow public access to the nursery along with the provision of a car park.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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's case for seeking an award of costs centres on their concern that the Council based their decision on the Local Highway Authority (LHA) objection and failed to base their decision on evidence, sound reasoning and a correct understanding of the development plan, National Planning Policy Framework (the Framework) and highways guidance. The applicant considers the objection from the LHA was based on an unsubstantiated policy with no evidence overall to demonstrate that the development would result in an unacceptable harm to highway safety, and as such, finds the Council acted unreasonably.
4. The LHA in their role as a statutory consultee, considered the proposal would conflict with Part 1, Section IN5 of the Leicestershire Highway Design Guide (2022) (LHDG), which was part of the LHDG being used by the LHA at the time the application was determined.
5. I am conscious that the Highway Design Guide, is just that, guidance. However, the LHA were not incorrect in assessing the proposal against Section IN5 which seeks to apply restrictions on the increased use of existing accesses on A Roads where, amongst other matters, vehicle speeds are in excess of 40mph. The LHA did not solely conclude against that but also considered that the intensification of the use could be of detriment to highway safety, contrary to the Framework.
6. I note that both the current and previous version of the Framework states that highway development should only be prevented or refused on highway grounds if

there would be an unacceptable impact on highway safety. Whilst noting that the wording used within the original LHA objection, decision notice and planning officer report does not exactly reflect that wording, the planning officer report did consider the proposal against other development plan policies including Policy DM17 of the Site Allocations and Development Management Policies Development Plan Document (2016) and Policy M10 of the Markfield Parish Neighbourhood Plan (2021). These policies were summarised within the officer report and the officer considered that, based on the response from the LHA, the scheme would be in conflict with those policies. Although this may differ to the opinion of the applicant, and to my findings in the appeal, it does not mean that the Council misinterpreted planning policy, nor is it indicative of unreasonable behaviour.

7. Whilst I note the comments of the Inspector in the East Langton appeal (Ref: APP/F2415/W/23/3319293) I do not have the full circumstances of that case before me, or the information that was before the Inspector in that appeal. I find that the LHA consultation response was sufficiently detailed and not based on vague assertions. It took into account the evidence submitted by the appellant, including that speeds would be below 40mph prior to the access point. It also considered the volume and speed of traffic on the A511 at the appeal site, the status of the road, the character and appearance of the area and the road safety record when coming to their overall conclusion that the intensification of the access point could generate a highway safety issue. I find there is no evidence to suggest the LHA applied a rigid and blanket approach.
8. The LHA also considered other applications that had been drawn to their attention by the appellant. The LHA clearly identified differences between those schemes and the proposed scheme. As such, the other cases do not set a precedent by which the Council should have granted planning permission nor that they or the LHA have been inconsistent in their approach.
9. Emails sent between the applicant and the LHA before determination of the application also demonstrates that the LHA gave consideration, prior to determination of the application, of the allowed East Langton appeal that the applicant considered of relevance. Whilst that appeal scheme did relate to Section IN5 of the Leicestershire Highway Design Guide, the LHA responded to the applicant detailing the differences between that scheme and the proposal including road class, status and location. Given the material differences, it was not unreasonable for the Council to come to a different view.

## **Conclusion**

10. In conclusion, based on the above reasoning, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. Therefore, the application for an award of costs is refused.

*T Bennett*

INSPECTOR