



## Costs Decision

Inquiry held on 3, 4, 5 and 10 August 2021

Site visits made on 13 July and 12 August 2021

**by Peter Rose BA MRTPI DMS MCMi**

an Inspector appointed by the Secretary of State

**Decision date: 28<sup>th</sup> September 2021**

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### **Costs application in relation to Appeal Ref: APP/X1925/W/21/3273701 Land south of Heath Lane, Codicote SG4 8YL**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Ashill Land Ltd for a partial award of costs against North Hertfordshire District Council.
  - The Inquiry was in connection with an appeal against a decision to refuse planning permission for 167 dwellings (Use Class C3) and associated works including formal open space, internal road network, landscape enhancement and creation of accesses from Heath Lane and St Albans Road; and the demolition of 66 St Albans Road.
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### **Decision**

1. The application for a partial award of costs is allowed.

### **The submissions for Ashill Land Ltd**

2. It is submitted that the Council behaved unreasonably with respect to its second reason for refusal by failing to provide evidence to substantiate that objection.
3. The evidence relied upon consists of no more than a general assertion that public confidence would be undermined in the process because people do not like the proposal. The evidence has not grappled with the clear, reasoned advice from Officers nor provided support that the emerging local plan (the ELP) would be undermined.

### **The response by North Hertfordshire District Council**

4. The Planning Practice Guidance (the Guidance) is clear that costs may only be awarded where a party has behaved unreasonably and that conduct has directly caused another party to incur unnecessary or wasted expense in the appeal process.<sup>1</sup>
5. The application should be dismissed for the simple reason that, even if, as the appellant contends, the Council had behaved unreasonably with respect to the substance of its second reason for refusal, the appellant has not incurred unnecessary or wasted expense in the appeal process as a result of any such conduct on the authority's part.

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<sup>1</sup> Paragraph 30: Reference ID: 16-030-20140306

## Reasons

6. The Guidance identifies various possible unreasonable behaviours by a local planning authority. These include failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.<sup>2</sup> The Guidance encourages authorities, amongst other things, to properly exercise their development management responsibilities, and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.<sup>3</sup>
7. Whilst Council Members have the discretion to reject a recommendation made by its professional Officers, evidence to substantiate each reason of a subsequent refusal of planning permission is still required.
8. Reason 2 of the Council's decision alleged that the scheme would be premature relative to the progress of the ELP. No change to the Council's position in relation to that objection was foreshadowed at the Inquiry Case Management Conference held in June 2021, and the parties then proceeded on those terms.
9. Under cross-examination at the Inquiry, the Council's planning witness clarified the authority's underlying concerns to this objection. In particular, he advised that the concerns were about a potential loss of confidence in the planning system should a site-specific decision be taken in advance of the ELP's adoption. The witness explained how that loss related not to the plan as a whole, but just to the implications for Codicote. He further clarified that, whilst such concerns still amounted to a harm weighing against the scheme, he would not invite the Inspector to dismiss the appeal on that basis alone.
10. On the final day of the Inquiry, the Council then withdrew the objection as a reason for refusal but maintained harm would still arise and to be weighed in the planning balance.
11. I find it legitimate, in principle, for a concern not to be assessed to be so significant as to constitute a reason for refusal but still to give rise to a degree of harm to be weighed as part of the decision.
12. Even so, that concern still requires to be substantiated through evidence. Very little evidence has been offered by the authority beyond general supposition, and no satisfactory rebuttal has been provided to the professional assessment presented to its Members in this regard. In my accompanying decision, I explain why I find no basis to objections around prematurity and nor around implications for public confidence.
13. The Council suggests that no additional expense was incurred by the appellant as, in any case, the authority still maintained that some harm would arise in that respect, and prematurity was also raised by third parties to the appeal. I am not persuaded by these points.
14. Firstly, the Framework states that where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the

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<sup>2</sup> Paragraph 049: Reference ID: 16-049-20140306

<sup>3</sup> Paragraph 028: Reference ID: 16-028-20140306

outcome of the plan-making process.<sup>4</sup> No such credible evidence has been provided, and the authority has not satisfactorily explained rejection of the conclusion set out in its Officer report that a refusal on such terms would not be justified.

15. Secondly, prematurity was maintained by the Council as one of only two reasons for the authority's formal opposition to the scheme. As a formally stated reason for refusal by the local planning authority and maintained until the final day of the Inquiry, such status is entitled to elicit greater attention and effort in rebuttal than one of many general bases for objection variously cited by local interested parties.
16. Whether presented as prematurity or public confidence, the appellant has therefore been required to incur unnecessary cost in responding to an unreasonable ground for refusal.

### **Conclusion**

17. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has been demonstrated. Accordingly, I conclude that a partial award of costs is justified.

### **Costs Order**

18. 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 Hertfordshire District Council shall pay to Ashill Land Ltd the costs of the appeal proceedings described in the heading of this decision but limited to those costs incurred in responding to Reason 2 of the authority's decision only, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
19. Ashill Land Ltd is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Peter Rose*  
INSPECTOR

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<sup>4</sup> Paragraph 50