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## Costs Decisions

Site visit made on 30 May 2018

by **R A Exton Dip URP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14<sup>th</sup> June 2018

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### **Costs Application A in relation to Appeal Ref: APP/X1925/W/17/3188488 Land adjacent Elm Tree Farm, Hambridge Way, Pirton SG5 3QY**

- 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 CALA Homes for a full award of costs against North Hertfordshire District Council.
  - The appeal was against the refusal to grant consent, agreement or approval to details required by condition No 6 of planning permission Ref 15/01618/1, granted on 27 May 2016.
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### **Costs Application B in relation to Appeal Ref: APP/X1925/W/17/3193466 Land adjacent Elm Tree Farm, Hambridge Way, Pirton SG5 3QY**

- 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 CALA Homes for a full award of costs against North Hertfordshire District Council.
  - The appeal was against the refusal to grant consent, agreement or approval to details required by condition No 6 of planning permission Ref 15/01618/1, granted on 27 May 2016.
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#### **Decision Costs Application A**

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

#### **Decision Costs Application B**

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

#### **Procedural matter**

3. As set out above there are 2 costs applications relating to the same site. Furthermore, both costs applications relate to different applications to discharge the same condition of the same planning permission. I have considered each proposal on its own merits. However, to avoid duplication I have dealt with the 2 applications together.

#### **Reasons**

4. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an application for an

- award of costs may be either procedural, relating to the process or substantive, relating to the issues arising from the merits of the appeal.
5. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should be permitted, failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposals impact which are unsupported by any objective analysis and refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in the appeal being avoided altogether.
  6. In Costs Application A, the appellant considers that the Council has acted unreasonably for the following reasons:
    - i) The reason for refusal is unsubstantiated.
    - ii) The committee ignored the advice of the Highway Authority as an expert consultee.
    - iii) The reason for refusal relies on a policy of an emerging development plan.
    - iv) The reason for refusal is vague and poorly composed.
  7. In Costs Application B, the appellant considers that points i), iii) and iv) apply and also that the Council has sought information beyond the scope of the condition.
  8. In both cases the appellant considers the Council's behaviour has caused unnecessary or wasted expense through the appeal process.
  9. Committees are not obliged to follow officer's recommendations in arriving at decisions. However, when a committee chooses not to follow officer's recommendations, it may act unreasonably where it cannot justify its decision.
  10. In the case of both costs applications the Council has failed to demonstrate that the submitted details were unsatisfactory to satisfy the purposes of the condition. It has therefore has not justified its decision.
  11. In the appeal decisions to which these costs applications relate I have identified that, irrespective of what might have been the Council's intentions when imposing condition No 6, there would be no means for it to be effectively enforced. In the case of Costs Application B, the Council's reasons for refusal are based on the absence of measures that could not be secured in any event. It has therefore made inaccurate assertions regarding the proposals impact.
  12. Although I have not agreed with them, I consider that the wording of the reasons for refusal themselves do not represent unreasonable behaviour. I also consider that reference to a policy of an emerging development plan is not in itself unreasonable behaviour. However, these matters do not outweigh my conclusions on the other aspects of behaviour I have found unreasonable.
  13. Consequently, the Council has acted unreasonably by delaying development which should have been permitted and failing to produce evidence to substantiate each reason for refusal on appeal. The appellant has therefore incurred unnecessary expense in pursuing the appeals.

**Costs Order**

14. 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 CALA Homes, the costs of the appeal proceedings described in the headings of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to North Hertfordshire District 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.

*Richard Exton*

INSPECTOR