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## Costs Decision

Site visit made on 16 August 2018

by **D Guiver LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State

**Decision date: 12 November 2018**

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### **Costs application in relation to Appeal Ref: APP/N2535/W/18/3203364 Land East of Hillside Cottages, Main Street, Burton-by-Lincoln**

- 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 S Myers, Leverton Farms Limited for a full award of costs against West Lindsey District Council.
  - The appeal was against the refusal of planning permission for a development described as full application for the erection of a single cottage and the part conversion and extension of an existing garage block to form an ancillary annexe, access and landscaping.
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### **Decision**

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

### **Reasons**

2. The applicant submits that the Council has acted unreasonably in that it failed to substantiate the reasons for refusal and made vague and unsupported assertions. Refusal was on the grounds that the proposal did not take account of the historic environment and the impact on the Burton Conservation Area (the Conservation Area), particularly in terms of design and amenity and that the site was in an unsustainable location away from transport links and shops.

#### *Conservation Area*

3. The first reason given for refusal was related to the impact of the proposal on the historic environment and the Conservation Area. Officers recommended approval on the basis that the impact would be acceptable but Members disagreed. Members are not required to follow officer recommendations and in this case and it will be seen from my decision in the substantive appeal that I found the impact on the Conservation Area and the setting of Listed Buildings and non-designated heritage assets to be contrary to policy and not outweighed by any identified benefits. I therefore disagreed with the officer's assessment and dismissed the appeal.
4. However, the decision gave two broad areas for refusal on this point, namely that the proposal did not take account of the historic environment and secondly the impact on design and amenity. On the first of these points the applicant's Design and Access Statement clearly addresses the significance of the Conservation Area and the Listed Buildings save for the Old School. There is no appraisal of the setting of the building at Hillside Cottages but the Council

did not specifically identify this as a non-designated heritage asset; it is identified as such in the Conservation Area appraisal. It was open to Members to disagree with the conclusions of the appraisal as a matter of planning judgment but it is not correct to say that no account was taken of the heritage assets. The omission in relation to Hillside Cottages and The Old School were minor points that had they been addressed would be unlikely to change the conclusions of either party.

5. It is possible that the drafting of the reason is simply an insufficient expression of disagreement on conclusions but the second element of the reason, design and amenity, is more problematical. While the reference to design and amenity reflects the title of Policy LP26 of the Central Lincolnshire Local Plan 2017 (the Local Plan), the Policy provides a number of different considerations. From my decision in the substantive matter it can be seen that I found the proposed design to be in keeping and reflective of the local vernacular in terms of materials used but also that the proposal would cause unacceptable harm to the living conditions of neighbouring occupiers.
6. There is little clarity in the decision notice to enable the applicant to understand the fundamental reasons for refusal. In the appeal process I had the benefit of the Council's statement which helped clarify matters. However, while the Council's statement does specify the matters being referred to it remains lacking in sufficient detail as to how the proposal would negatively impact on heritage assets and the amenity of neighbours. While failure to substantiate reasons for refusal in the decision notice constitutes unreasonable behaviour, the appeal was made with a view to pursuing the application. As the appeal was dismissed for the similar reasons, the applicant did not incur additional or unnecessary expense in pursuing the appeal.

#### *Unsustainable Location*

7. The second ground of refusal, namely that the site is in an unsustainable location away from transport links and shops is untenable given the totality of the local development plan. The village of Burton has very few facilities but is relatively well served by public transport, with numerous buses available from stops within easy walking distance of the appeal site. From the decision in the substantive matter it will be seen that I did not agree with the Council's conclusions on this matter.
8. Burton is identified in Policy LP4 of the Local Plan as earmarked for 15% housing growth over the lifetime of the Plan. Housing anywhere in the village would be subject to the same paucity of local facilities and the reliance on travel to access services. While there is always an element of judgment in the suitability of transport links when these have to be accessed some distance away, there are few locations in the village closer than the appeal site to the bus stops on Middle Street.
9. Policy LP4 clearly supports development in the village and there is evidence before me of other proposals being approved. Those schemes will have similar or perhaps poorer access to facilities and transport and therefore the reliance of a lack of services and public transport links is evidence of apparent inconsistent decision-making and contrary to the Council's own Policy. This failure to provide substantiated reasons for refusal in the decision notice constitutes unreasonable behaviour. As the ground for refusal was not

sustainable the applicant incurred unnecessary and wasted costs in pursuing an appeal on this point.

### *Other Reasons*

10. At the committee meeting on 4 April 2018, Members raised a concern about possible springs running through and below the appeal site. There is no mention of possible springs in the Officer's report to committee and this did not form any part of the Council's reasons for refusal. However, in its statement the Council re-introduces the question of springs and also, for the first time, the impact of the proposal on the Lincoln Cliff escarpment Area of Great Landscape Beauty (the AGLV). The site is below the ridge and outside the AGLV and there is no evidence that the proposal would affect springs on the appeal site, or even that there are springs on, or water crossing the site.
11. 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. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal by failing to produce evidence to substantiate each reason for refusal and introducing vague, generalised or inaccurate assertions about a proposal's impact that were unsupported by any objective analysis.
12. While the appeal was dismissed for a reason similar to that the Council gave, it also relied on unsustainable grounds contrary to its own policy and introduced or re-introduced additional matters that the applicant had to address. This caused the applicant to incur unnecessary costs in addressing those issues within the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. However, those wasted costs are limited to the expense of addressing the second main issue in the appeal and the additional matters only so that a partial award of costs is justified.

### **Costs Order**

13. 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 West Lindsey District Council shall pay to Mr S Myers, Leverton Farms Limited, the costs of the appeal proceedings described in the heading of this decision, those costs being limited to the costs incurred in addressing the unsustainable location of the development, the effect of springs on the site and the effect on the AGLV, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to West Lindsey 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.

*D Guiver*

INSPECTOR