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## Costs Decision

Site visit made on 29 May 2018

by **Graham Chamberlain BA (Hons) MSc MRTPI**

**Decision date: 11<sup>th</sup> June 2018**

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### **Costs application in relation to Appeal Ref: APP/V2635/W/18/3195074 Land south of Prince Henry Place, Downham Market, Norfolk PE38 9BL**

- 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 Bob Fidock for a full award of costs against King's Lynn and West Norfolk Borough Council.
  - The appeal was against the refusal of planning permission for a development proposal described as '19No 2 and 3 bedroom dwellings with associated garages/parking, access road, landscaping and open space. This provides a mix of 15No market sale dwellings and 4No affordable high quality dwellings'.
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### **Decision**

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

### **Reasons**

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant has suggested that the Council's reasons for refusal were vague and without substance and therefore it has prevented development that should have clearly been permitted. Thus, the Council's decision has resulted in the appellant being put to wasted expense in pursuing an unnecessary appeal.
4. The Council's first reason for refusal relates to the design of the appeal scheme and states that the proposed development would not be of a high quality. This is a rather vague assertion that went against the advice of the Council's Planning Officers. However, when the Council's submissions are considered as a whole it is apparent that the concerns relate to the scale of the proposed development and the relationship it would have with its surroundings. In particular, the predominance of two storey properties next to an estate generally comprising bungalows. I share the Council's concerns in this respect.
5. The Council's reservations could have been better articulated in the reason for refusal but it ultimately put forward a cogent explanation as to why it found the appeal scheme to be unacceptable. Moreover, the Members of the Council's planning committee had visited the appeal site, debated the proposal and referred to relevant development plan policies. Matters of design also have an element of subjective planning judgment. Consequently, the Council's first reason for refusal did not amount to a substantive failing.

6. In respect of the Council's second reason for refusal, the Members of the Council's planning committee came to the view that the construction and subsequent occupation of the proposed dwellings would harm the living conditions of the residents in Prince Henry Place through unreasonable levels of noise and disturbance. The Members of the committee arrived at this conclusion based on its local knowledge and the representations submitted by interested parties. However, in doing so it has not adequately explained why this outweighed other substantive matters.
7. In particular, Members of the planning committee took this view against the advice of its planning officers, who were informed by specialists in the Council's Environmental Health and Housing Team. It is unclear why. Moreover, it is not apparent that the Members of the committee properly considered the possibility of imposing a planning condition requiring the submission of a Construction Management Plan as recommended by the Planning Officers.
8. In addition, it is entirely unclear why the site, which was previously allocated for residential development, would now be unacceptable due to the noise and disturbance that would be caused from its construction and occupation. The Council has also failed to properly explain why the occupation of the proposed dwellings would be unacceptably noisy when this is not the case with the existing residential development in Howdale Rise. The suggestion that the appeal scheme would be occupied by families, and that families are noisier occupants, is speculative. Members visited the site but they should have gone beyond their own observations, or that of local residents, and considered and weighed all of the evidence before them. It is not apparent that they did and this has led to a conclusion that does not stand up to an objective analysis.
9. As such, the second reason for refusal has not been properly substantiated and the concerns raised were capable of being dealt with through the imposition of a planning condition, a draft of which was before the Members of the planning committee when they considered the proposal. As such, the second reason for refusal was unreasonable. This is a substantive failure that has resulted in the appellant being put to the expense of contesting it as part of the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

10. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Bob Fidock the costs of the appeal proceedings described in the heading of this decision in so far as they relate to the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed. Mr Bob Fidock is now invited to submit to King's Lynn and West Norfolk Borough 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.

*Graham Chamberlain,*  
INSPECTOR