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## Costs Decision

Site visit made on 18 December 2018

**by Beverley Wilders BA (Hons) PgDurb MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> January 2019**

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### **Costs application in relation to Appeal Ref: APP/L3245/W/18/3200964 Jayroc Stables, Shawbury Heath, Shawbury SY4 4EA**

- 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 & Mrs R Hand for a full award of costs against Shropshire Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a horse walker (15m diameter); isolation unit; extensions to existing agricultural building.
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### **Decision**

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

### **Reasons**

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
4. In particular paragraph 048 states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. The appellants' case is essentially that the original planning officer dealing with the application had completed her consideration by the end of 2017 and was minded to recommend approval in January 2018. However the application was subsequently taken over by a new planning officer after the original one left the Council and the new officer began to rehearse issues that had previously been

- settled with the original officer. The appellants' consider that the Council placed significant and unreasonable weight on allegations made by a local resident. Consequently an appeal was considered the only way of obtaining a definitive outcome.
6. The application was dated 27 January 2017. It appears from the evidence that following correspondence between the appellants and the Council, the Council's planning officer was minded to recommend the application for approval at the beginning of January 2018. However, the Council states that before the application was determined, additional correspondence was received from a local resident including concerns regarding drainage and flooding at the site. The appellants confirmed that flooding had taken place and that a large amount of water had been pumped off site, however they stated that it was a one off even that was due to a collapsed drain and exceptional weather. Further representations were also made about the use of the site and the existing agricultural building and the justification for the proposed extension.
  7. I have been provided with copies of emails sent on behalf of the appellants to the Council providing responses to additional queries raised following the receipt of additional representations and a change of planning officer. In an email dated 26 March 2018 the appellants' agent advised that an appeal against non-determination would be submitted should the application not be determined in the next 28 days. The Council states that an email requesting additional information was sent to the appellants on 29 March 2018 but that no reply was received. I do not appear to have been provided with a copy of this email. The appellants submitted the appeal against non-determination on 22 April 2018.
  8. Notwithstanding the Council's claims, it is evident from the correspondence submitted with the appeal that the issue of the drainage of the site was in fact raised by interested parties prior to January 2018. Consequently it does not appear that it was a new issue that was not before the original planning officer when she made her recommendation. Following the receipt of representations regarding drainage and flooding, it does not appear from the evidence that the Council re-consulted its drainage advisor who had previously commented on the application and raised no objections to the development proposed.
  9. I have seen no evidence to demonstrate that the Council gave the appellants a proper explanation as to why it was not able to determine the application within the time limits. I understand that extensions of time were agreed but have seen no evidence of these and it appears from the evidence that none were agreed in 2018. I have had regard to the Council's explanation as to why permission was not granted within the relevant time limit and prior to the appeal being submitted. However as can be seen from my decision letter, whilst I am dismissing the appeal, I consider that adequate drainage for the development could be secured by condition, albeit not necessarily via soakaways. The reason for my dismissal is not due to the merits of the case but is due to the appellants' unwillingness to accept the imposition of a pre-commencement condition regarding drainage, a matter more likely to have been capable of being successfully negotiated with the appellants during the application.
  10. Consequently I consider that in failing to determine the application the Council has behaved unreasonably and that this has led to unnecessary expense during

the appeal process. For this reason, and having regard to all matters raised, a full award of costs is justified.

**Costs Order**

11. 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 Shropshire Council shall pay to Mr & Mrs R Hand, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Shropshire 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.

*Beverley Wilders*

INSPECTOR