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## Costs Decision

Site visit made on 4 March 2014

**by Susan Holland MA DipTP MRTPI DipPollCon**

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

**Decision date: 31 March 2014**

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### **Costs application in relation to Appeal Ref: APP/L3245/A/13/2210532 Land rear of Maesercroft, Kinnerley, Shropshire SY10 8DF**

- 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 Steve Jennings for a full award of costs against Shropshire Council.
  - The appeal was against the refusal of the Council to grant planning permission for the erection of 10 dwellings together with landscaping and associated parking.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The application for costs was made and responded to on the basis of Circular 03/2009, which has been superseded by the Department of Communities and Local Government's Planning Guidance issued on 6 March 2014. However, having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the Planning Guidance. Paragraph (¶) 030 of the Planning Guidance 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. The Council's submitted statement on the appeal does not (as alleged by the Appellant) *contain inaccurate assertions about the resultant impact on a heritage asset*: the statement makes no reference to any heritage asset. The Appellant's application for costs appears to imply erroneously, at ¶b, in its reference to *the Council's own Conservation Area Assessment*, that the appeal site lies within a Conservation Area. The consultation response of the Council's Conservation Officer states that *the proposed development site does not lie within a conservation area or contain any listed buildings.* The wording at ¶b of the Appellant's application for costs thus appears to have been wrongly inserted. But given that it forms part of the application for costs, it suggests an element of unreasonable behaviour on the part of the Council which is not demonstrated.
4. The Council's decision, which was taken contrary to the recommendation of its professional Planning Officers, was based upon a difference of opinion concerning the overall design quality of the proposed development. This is essentially a matter of judgment. The Neighbourhood Plan for Kinnerley seeks to secure, in future built development, a locally distinctive character of design.

In the implementation of this Plan in the current case this element has proved in practice, as exhibited via local consultation, to be highly prescriptive; and to go beyond what is visible in the surrounding area, and beyond the policy requirement of the adopted Core Strategy. Nevertheless, the terms of the Neighbourhood Plan themselves invite the pursuit of ambitious design solutions and for that reason the Council's attention to local opinion does not, on balance, constitute unreasonable behaviour. The evidence on which the Council relies includes the evidence which is available and visible on the ground, and against which the impact of the appeal proposal is to be judged.

5. The principle of residential development on the site has indeed been established by the earlier planning permission for 7 dwellings. However, the current appeal proposal increases the number of dwellings to 10, and changes the dwelling types and sizes proposed. This is a material increase which justifies a fresh consideration of the site in the context of the new proposal. Though the previous permission represents a material consideration, it cannot be assumed that planning permission should be automatically forthcoming for the new proposal.
6. The Appellant was aware, throughout the application process, of the local concern for particular features of design, but chose to pursue, albeit with certain concessions, his own preferred designs. The planning application and appeals process allows for such divergences of opinion to be examined independently. The Appellant's frustration is understandable, but is no guarantee of ultimate success in the Costs process. The resulting appeal decision in this case is in favour of the Appellant, but that does not in itself demonstrate unreasonable behaviour on the part of the Council.
7. Accordingly, on balance, the Council did not unreasonably refuse the application the subject of the current appeal, and has not behaved unreasonably in its conduct of the appeal; and unreasonable behaviour resulting in unnecessary or wasted expense, as described in the DCLG Planning Guidance 2014, has not therefore been demonstrated.

*S Holland*

INSPECTOR