



## Costs Decision

Site visit made on 10 April 2024

**by H Wilkinson BSc (Hons) MSc MRTPI**

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

**Decision date: 24 May 2024**

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### **Costs application in relation to Appeal Ref:**

**APP/L3245/W/23/3330609 Lyndas Field, Cleobury Mortimer, Shropshire, DY14 9DX**

- 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 Ms Sandra Whitmore for a full award of costs against Shropshire Council.
  - The appeal was against the refusal of planning permission for a replacement dwelling.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The Council's delegated report sets out that the proposal, by virtue of its encroachment onto previously undeveloped land would not relate to the layout and form of the adjoining land and would visually impact the rural landscape. Whilst the appraisal is somewhat brief, it nevertheless details its case and conclusion, having regard to the relevant development plan policies which seek to maintain and enhance the countryside vitality and character. Whilst I have reached a different finding, there is inevitably a degree of subjectivity in considering this matter. Based on the evidence, I am satisfied that the Council's reasoning clearly sets out clear and unambiguous reasons to refuse planning permission on the grounds of its effect on the character and appearance of the area.
4. The second reason for refusal states that the proposal would be within the open countryside, away from any defined rural settlement and would not fall within any of the exceptions or any of the special circumstances set out within both national and local policy. However, as a rural housing exception, Policy MD7a of the Shropshire Council Site Allocations and Management of Development Plan 2015 permits the replacement of existing dwellings in the countryside. While the existing building is shown to be retained on the submitted plans, it is clear from the description of development and the supporting evidence that the proposal relates to the erection of a replacement dwelling. However, there is no reference made to this exception within the officer's reasoning and the report is silent on the case for a replacement dwelling in the context of this policy.
5. No statement of case has been provided by the Council. In rebutting the cost application, the Council seeks to argue that its approach was not unreasonable

given that there was no suitable mechanism before them to ensure that the use of the existing dwelling cease upon first occupation of the replacement dwelling. There is however no indication within the delegated report that this was considered by the Council in reaching its decision, and it is not clear why this issue could not have been resolved by the imposition of a condition, particularly given that the existing dwelling is included within the application site boundary.

6. Accordingly, in failing to consider the relevant local policy in full, the Council did not exercise their development management responsibility. Refusing planning permission on this basis was therefore unreasonable. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial award of costs is justified in so far as it relates to the second reason for refusal.

### **Costs Order**

7. 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 Ms Sandra Whitmore, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

*H Wilkinson*

INSPECTOR