

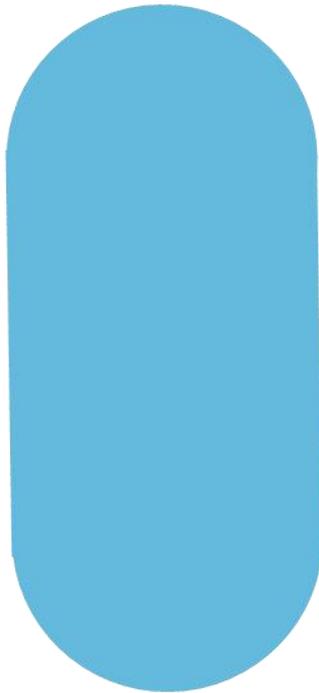
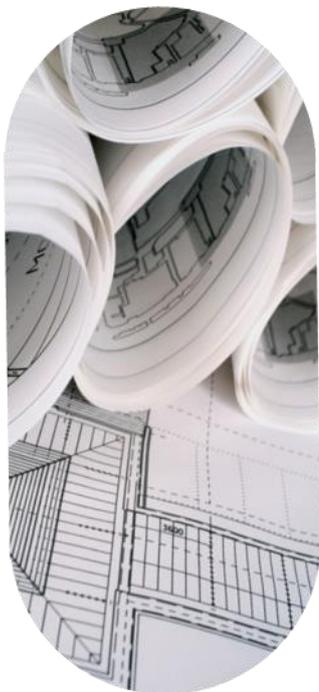
Anstee and Witting Property Partnership

COSTS APPLICATION

Appeal against refusal of outline planning permission for the erection of 4 dwellings with associated access and community orchard (access to be considered) at land off Fenny Lane, Shearsby, Leicestershire

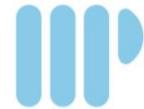
LPA Ref: 18/01695/OUT

APPEAL REF: APP/F2415/W/19/3229976





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- 1.1 This application for a partial award of costs is made against Harborough District Council (“the Council”) on behalf of the Anstee and Witting Property Partnership (“the Appellant”) in respect of the above appeal, having regard to the Government’s Planning Practice Guidance (“the PPG”).
- 1.2 This application is submitted in accordance with the provisions of the PPG. Paragraph: 035 Reference ID: 16-035-20161210 of the PPG states that applications for costs in the case of appeals determined via the written representation procedure, that the costs application must be made in writing no later than the final comments stage. This application is made at the final comments stage and therefore accords with the requirements set out in the PPG.
- 1.3 The application for a partial rewards of cost is made on a substantive basis, relating to the merits of the appeal. Despite the development plan for the Harborough District being updated since the determination of the application, and there now being policy support for the appeal proposals under policies SS1 and GD4 of the Local Plan, the Council maintain their stance that the appeal proposals should be dismissed.
- 1.4 The Appellant considers that in refusing the application for the reasons set out in the decision notice Ref: 18/01695/OUT, the Council have delayed and prevented a development which should clearly have been permitted, having regard to S.38(6) of the Planning and Compulsory Purchase Act 2004. The Appellant therefore contends that preparing a highways response to reason for refusal 2 should have been avoided and that as a result they have been put to unnecessary and wasted expense.
- 1.5 In the view of the Appellants the Council have unreasonably refused the submitted planning application (as for example set out in Paragraph: 049 Reference ID: 16-049-20140306 of the Guidance) necessitating the submission and pursuit of the appeal and in doing so have:
- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - failure to produce evidence to substantiate each reason for refusal on appeal



- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead

1.6 Since the submission of the appeal the Council have provided their Appeal Statement of Case (hereby "SOC"). Attached at Appendix 4 of the SOC is an Appeal Statement prepared by the Highways Authority, Leicestershire County Council (hereby "LCC"). The Appeal Statement confirms that LCC have lifted their objection to the proposed development on highways grounds, subject to the Inspector accepting the revised drawings and reports submitted as part of this appeal having regard to the Wheatcroft Principle. For clarity, the "revised documentation" is provided at enclosures 601 to 606, and 903 to 905 of the Appeal submissions, as identified on the submitted "List of Documents".

1.7 It is the view of the appellant that the Council have therefore acted unreasonably and a partial award of costs should be given. Paragraph: 047 Reference ID: 16-047-20140306 identifies behaviour which may give rise to a procedural award against a local planning authority and explicitly states that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour which may result in an award of costs include:

- Lack of co-operation with the other party or parties
- Withdrawal of any reason for refusal

1.8 The Appellant's Appeal Statement sets out in detail why the appeal should be allowed and those submissions are not repeated here. However, it is pertinent to note that the appellants case demonstrates that:

- In the period since the original refusal of the planning application, the appellant has commissioned HAS, the appointed Highways Consultant to undertake a Road Safety Audit and provide a Highways Technical Appendix that addresses the objections raised



by Leicestershire County Council. This is confirmed in Appendix 4 of the Council's SOC. The Highways Technical Appendix (enclosure 903) confirms that the design of the appeal proposals are wholly acceptable with regards to site access and turning heads and this is now endorsed by LCC.

- The Council are of the opinion that the appeal proposals have been amended from those which have been refused planning permission (SOC, para. 4.6). As confirmed within the Appeal Statement prepared by Marrons Planning and the Highways Technical Appendix provided by HAS, the appeal proposals themselves in terms of layout have not changed from those refused planning permission. The enclosed Highways Technical Appendix confirms that on the 15th November 2018, within the determination deadline for the application, supporting information was provided to LCC which confirmed that the Fenny Lane turning head would be enlarged, not removed.
- Two supporting reports, in the form of the aforementioned Highways Technical Appendix (enclosure 903) and the Road Safety Audit and appendices (enclosures 904 and 905) have been submitted, confirming that the site access will now be a private driveway and providing clarifications over the turning heads to be provided. This information has since been accepted by LCC and reason for refusal 2 has been dropped, subject to the Inspector's accepting of the additional evidence.
- Rather than forward HAS the comments provided by LCC and allowing resolution of highways matters prior to the issuing of the decision notice, the Council prematurely brought to an end an on-going discussion between the Highways Consultants by refusing the planning application. Such discussions would have limited the scope of the appeal and not given rise to additional unnecessary expense. The Council have failed to have regard to the development plan and other material considerations, which the appellants have assessed in detail, and which demonstrate that there is no justification for the continued imposition of reason for refusal 2.



1.9 The Appellant's appeal statement considers in detail the Council's case as set out in the Officer's report and the decision notice and demonstrates that in respect of the reason for refusal the Council has:

- done no more than rely upon vague, generalised or inaccurate assertions about the appeal proposal's impact, which are unsupported by any objective analysis; and
- thereby, prevented development occurring which should clearly have been permitted, having regard to its accordance with the development plan, national policy and all other material considerations.

Conclusions

2.1 The appeal proposals is considered to accord with the policies of the Development Plan, and the National Planning Policy Framework. The reason for refusal given by the Council is unreasonable and the Council have failed in their appeal case to justify the reasons for refusal as they are required to do in accordance with the provisions of the PPG.

2.2 It is therefore the Appellant's unequivocal submission that the Council have acted unreasonably for the reasons set out in these submissions and that the Appellant has been put to unnecessary costs.

2.3 Accordingly, the Appellants respectfully apply for a partial award of costs incurred from the date that the appeal was submitted to account for the drafting of the highways response and highways section of the Appeal Statement.