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## Costs Decision

Site visit made on 11 August 2020

by **P Wookey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> October 2020

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### Costs application in relation to Appeal Ref: **W/4001086**

#### **Land on the south east side of Bartletts Close, Halfway, Sheerness, Kent, ME12 3EG**

- 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 Stephen Potter for a full award of costs against Swale Borough Council.
  - The appeal was against the refusal of outline planning permission for the erection of 17 dwellings, new access road, associated parking and landscaping
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### Decision

1. The application for an award of costs is partially allowed in the terms set out below.
2. 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 applicant states that the Council acted unreasonably by seeking to strengthen its decision to refuse permission by the inclusion of Reason for Refusal 1 (RR1,) and Reason for Refusal 2 (RR2). Further, the appellant states that there was a lack of balanced judgement in the Council's decision-making process on Reason for Refusal 3 (RR3). On these matters the applicant states that the Council failed to submit any substantive evidence to support its reasons for refusal and as a result unnecessary costs in preparing and submitting appeal documents have been incurred.
4. The Council does not accept that it acted unreasonably and that its decision was justified on planning policy terms and whilst Council Members determined the application contrary to the Officer recommendation, they are within their rights to do so and have local knowledge to support their decision.

### Reasons

5. In this case I have had regard to the evidence presented by the Council's Planning Committee and whilst I was not present at the meetings, the minutes which have been submitted as evidence provide a clear account of the deliberations of all those present.
6. With regards RR1 and RR2, the Planning Committee Council was presented with the Officers assessment of whether the development was in a sustainable location and its effect on the gap between settlements. Whilst the appellant

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states that the RR1 was added to bolster the Council's decision to refuse permission, the Planning Committee would have been aware of the relevant policies as its grounds for refusal for both RR1 and RR2.

7. As advised by the Head of Planning Services, the site was outside of the settlement boundary and would conflict with the relevant policies, even though the Officers report found the proposals to constitute a sustainable location for the development proposed. Ultimately it was reasonable for the Planning Committee Council to make an assessment of whether the development would be in a sustainable location or would have an adverse effect on the importance of the countryside gap, based on its assessment of the Officers report and local knowledge. I am satisfied that the Council's Statement of Case provides further justification for RR1 and RR2, which provide valid reasons for refusal and accordingly, the Council did not act unreasonably.
8. With regards RR3, the Planning Committee would have been aware of the concerns of interested parties and sought to find valid planning reasons in order to safeguard their interests, which led to the deferral of the application to the second Planning Committee meeting. Having regard to the Officers report and minutes of the Planning Committee on 5 March 2020, the main focus of discussion was on the suitability of the private road as a means of access to the development proposed. The Officer's reports and the Technical Notes submitted by the appellant provided a comprehensive assessment as to whether or not, the appellant would be required to contribute to the costs of its upgrade to adoptable standards.
9. The correspondence between the Highways Authority and the parties shows that there was no requirement for the link roads or the estate roads to be of adoptable standards and that it would not be possible for the Highways Authority to enter into a Section 38 Agreement. It was also clear in the Officer's report on 5 March 2020, that the Council had no policy requiring the adoption of unmade roads and that a condition requiring improvements to the road would not meet the tests, set out in Paragraph 55 of the National Planning Policy Framework (2019).
10. The Planning Committee was advised by Officer's that the Highways Authority had not commented on the suitability of the access road, only on matters relating to it being upgraded to adoptable standards and that there was no clear policy basis to refuse the scheme on highways grounds and no technical evidence to support it as a reason for refusal. During the appeal process the Council did not submit any further technical evidence to support the RR3, even though I note that it had been proposed by a member of the Planning Committee that independent highways advice should be obtained, but this was not pursued.
11. On RR3, in my view the Council acted unreasonably, as it did not take into account all of the information that had been presented to it and as a result, did not make a balanced assessment of the highway matters as they related to the unmade road. Further, the Council did not provide adequate justification based on any technical evidence for its reason for refusal RR3, during the appeal process.
12. For the reasons given above, I find that the Council acted unreasonably with regards RR3, as described in the PPG and as a result the applicant has incurred unnecessary and wasted expenditure in lodging the appeal and application of

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costs. I therefore conclude that a partial award of costs is justified in this respect.

**Costs Order**

13. 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 Swale Borough Council shall pay to Mr Stephen Potter, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal process with regards those costs incurred in reviewing the documentation and preparing documents to be submitted as highways evidence for the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement to the amount.

*Paul Wookey*

INSPECTOR