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## Costs Decision

Site visit made on 3 March 2014

**by J Flack BA Solicitor**

**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/V2255/A/13/2206002  
Land adjoining Community Hall, Shellness Road/Wing Road, Leysdown,  
Sheerness, Kent ME12 4RH**

- 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 P and G Taylor Ltd for a full award of costs against Swale Borough Council.
  - The appeal was against the refusal of planning permission for residential development of 4 No. x 2 Bedroom and 1 No. x 3 bedroom single storey dwellings together with all associated driveway parking.
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### Decision

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

### Procedural matter

2. The application for costs was made and responded to in the context of Circular 03/2009. This has been superseded by the Planning Practice Guidance, which was issued on 6 March 2014, and in the light of this I afforded the parties an opportunity to make comments. None have been received.

### Reasons

3. The Planning Practice Guidance advises that whilst parties in planning appeals normally meet their own expenses, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. The Council's decision on the application was taken against the recommendation of its officers. The Planning Practice Guidance advises that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal.
5. The Council's first refusal reason stated that noise and disturbance arising from the village hall would unacceptably harm the amenities of future residents of the proposal. In so determining, the Council rejected the unequivocal technical advice of its officers that the proposed acoustic fence would be effective to prevent harmful noise pollution and that a condition requiring its provision would suffice. At appeal, the Council has done little to support its refusal, providing no specific evidence as to anticipated noise pollution, nor refuting the noise survey provided by the appellant. The Council's evidence is, in essence,

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- limited to assertion that it has not been sufficiently demonstrated that the living conditions of future occupiers would not be harmed, the Council pointing out that the information supplied concerning the proposed acoustic fence did not demonstrate how effective it would be in relation to the circumstances of the appeal site, and stating the concerns of Councillors that the fence might not be adequate in the absence of a detailed design or accurate noise assessment.
6. Nevertheless, in my appeal decision I have concurred with the findings of the noise survey that it will be necessary to combine the acoustic fence with other mitigation measures to the proposed dwellings. To that extent the Councillors' concerns have proved justified.
  7. However, I have also found that a condition requiring the fence, together with measures recommended by the survey, to be provided is sufficient to prevent unacceptable effects on the living conditions of future occupiers of the proposal. The Planning Practice Guidance advises that a planning authority refusing permission on a ground capable of being dealt with by condition risks an award of costs where it is concluded on appeal that suitable conditions would enable the development to go ahead.
  8. Given this advice, and that the Council's concerns as to lack of comprehensive information arose in the context of contrary advice of its officers, I consider that the Council has behaved unreasonably through refusing the application on a ground it has failed to evidence adequately at appeal, rather than allowing the appellant an opportunity to answer the Council's concerns by submitting a noise survey. However, I also consider that the Council would not have behaved unreasonably in requiring a survey rather than simply accepting the advice of its officers. It follows that although the Council's unreasonable behaviour has led to appellant incurring unnecessary expense in pursuing the appeal on this refusal ground, that expense does not include the costs of the noise survey given that the appellant could reasonably have been expected to provide this in any event to secure permission.
  9. The second reason for refusal was that the proposal, and in particular the boundary fence, would lead to unacceptable loss of daylight and sunlight to the village hall. I have found that it would not do so. Although I have given limited weight to the appellant's drawing which seeks to demonstrate that there would be no unacceptable effects, the Council has not sought to refute the drawing nor has it provided substantive evidence of its own. Its evidence is largely limited to general assertions of harmful effect, ignoring the set back of some of the windows in the flank wall of the hall, and its statement as to the hall being a single large space suggests that the effects of the fence would be mitigated by other windows in the hall. I consider therefore that the Council has behaved unreasonably by failing to produce relevant evidence on appeal to support this refusal reason, and this has led to the appellant to incurring unnecessary expense in pursuing the appeal in relation to this reason.
  10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

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**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 Swale Borough Council shall pay to P and G Taylor Ltd the costs of the appeal proceedings described in the heading of this decision, but excepting the costs incurred in relation to the report of Grant Acoustics, Ref GA-2013-0052-R1, dated 1 November 2013.
12. 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 as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*J Flack*

INSPECTOR