

DEVELOPMENT CONTROL AND LICENSING COMMITTEE

7th July 2015

COSTS AWARDS ON APPEALS

Report of the Director for Places (Environment, Planning and Transport)

Strategic Aim:	Ensuring the impact of development is managed	
Exempt Information	No	
Cabinet Member Responsible:	Councillor Terry King, Portfolio Holder for Places (Development) and Finance	
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Ward Councillors	All	

RECOMMENDATION

That the contents of this report are noted

1. PURPOSE OF THE REPORT

- 1.1. This report researches recent appeal costs awards against the Council and what can be learned from them.

2. BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 In reaching a decision on a planning appeal the Inspector will consider whether an award of costs should be made against any party to the appeal. Costs may be awarded if a party has behaved unreasonably and this has caused another party to incur unnecessary or wasted expense. An award of costs can be made even if no party has applied for costs.

- 2.2** In relation to councils, costs awards are designed to, “encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, (and) not to add to development costs through avoidable delay”. (PPG 2014)
- 2.3** The Inspector decides whether a costs award is made and whether it is full or partial but does not determine the amount of costs. The current guidance was issued by the Government on 6th March 2014 and is contained in the online only Planning Practice Guidance. An extract is included in Appendix A.

3. DECISIONS ON RECENT CASES

- 3.1** The Council has recently received three costs awards against the Council which is unprecedented. These are detailed below.

- 3.2** **APP/A2470/A/14/3001052 – Larkfleet Homes – 2014/0386/RES**
Burley Park Way, Barleythorpe, Oakham LE15 7EE
Erection of apartment block

The Council did not accept unequivocal legal advice on car parking provision. Whilst the Inspector found the concern was right the Design Code was misunderstood in his view. The sustainability credentials of the site were not assessed. Without evidence the Council’s stance was vague and lacked analysis.

Lessons from this decision

Technical evidence was needed to support the reason and that was not available.

- 3.3** **APP/A2470/A/14/2222210 – Hanover Developments Ltd – 2013/0956/OUT**
Greetham Garden Centre, Oakham Road, Greetham LE15 7NN
Outline Planning application for the redevelopment of the former Greetham Garden Centre for residential development for up to 35 dwellings.

This was a partial award of costs as the Council did not notify neighbours of the hearing date as it should have done, resulting in the postponement of the hearing. In addition the Council was unable to provide a venue for the re-arranged date so the appellant unilaterally arranged and paid for a venue.

Lessons from this decision

Officers have reinstated a refined version of an older paper based system to monitor progress on appeals to ensure all stages of appeals are correctly followed. This had ceased when new software was installed but this software cannot provide the necessary process controls. For most hearing and inquiry cases the best and sometimes only suitable venue is the Council Chamber and one of the 3 adjoining rooms due to the requirements of the Planning Inspectorate. There is an issue with these venues being booked long in advance and unavailable. The Planning Inspectorate can impose a date on the Council. There is a corporate priority list for the use of the Council Chamber but planning inquiries and hearings

are not identified as a priority. More effort will be made in future to try to relocate other users. These actions should avoid a recurrence of these issues.

3.4 APP/A2470/W/15/3002295 - Imprezaco Limited – APP/2013/0221

Former Rose of England Hotel, Old Great North Road, Little Casterton, PE9 4DE
Erection of 15 Employment units (Use Classes B1, B2 and B8)

This was a committee decision contrary to officer recommendation. The first reason related to planning policy. The Inspector accepted that it was balanced and that whilst Members took a different view to officers that the reasons were explained and not unreasonable.

Reason 2 related to highway safety where the highway authority had recommended it was acceptable. As no technical evidence was produced to substantiate this reason the Council's behaviour was held to be unreasonable.

Reason 3 related to over development due to space for lorry parking and external waste storage. The Inspector noted the lack of a highway objection and that waste storage could have been conditioned. He found that in the absence of substantive evidence the behaviour was unreasonable.

Lessons from this decision

Had Members only applied the policy issue there would have been no award of costs. If technical issues are raised as reasons for refusal that are not supported by technical consultees, where will the evidence to justify that come from?

- 3.5** In the same period the Council has succeeded in getting a costs claim rejected for the Land to the rear of North Brook Close, Greetham. The Inspector decided that although Members had overturned a recommendation to approve that there was evidence to support that overturn. That evidence was around design issues and density, with critically the density being higher than set out in the development plan.

4 EXPERIENCE OF OTHER COUNCILS

- 4.1** The change in Government guidance in 2014 built on longstanding Government guidance and was perceived as a tightening of advice. However for the first year of operation this had not affected Rutland. It now appears that it has. Neighbouring authorities have been contacted to see if they have noticed any change in awards of costs. With one exception those that replied had noticed a change. One of our neighbouring authorities has had 5 claims in the last 6 months with costs awarded in 4 cases. There were several references to cases where Members had overturned a recommendation and costs were awarded. There were also references to cases where technical evidence could not be produced to justify a decision. In one case in Oadby where a costs award did not succeed two members of the Committee attended the hearing to defend the decision for the Council.

5. REASONS FOR REFUSAL

- 5.1** Members and Officers in refusing applications need to be sure that the evidence exists to substantiate each and every reason. If there is a strong and a weak reason then particular care needs to be exercised in any decision about adding the weaker reason. The likelihood of an award of costs being applied for has

increased. In recognition of this the Council needs to apply the same criteria and has recently indicated on two appeals that it will seek an award of costs.

6 CONSULTATION

6.1 Consultation has taken place with neighbouring authorities

7 ALTERNATIVE OPTIONS

7.1 The alternative option is not to review these cases which would place the Council at risk of further costs awards.

8 FINANCIAL IMPLICATIONS

8.1 In the cases quoted the financial implications should be low with only three or four figure sums. As claims have not yet been submitted actual figures are not available and even when submitted they will be checked in detail to ensure the claim is reasonable.

8.2 However costs awards have the potential to be large and have a significant budget implication.

9 LEGAL AND GOVERNANCE CONSIDERATIONS

9.1 As this is only a report for noting it has not needed to address authority, powers and duties.

10 EQUALITY IMPACT ASSESSMENT

10.1 An Equality Impact Assessment (EqIA) has not been completed for the following reason; because there are no relevant service, policy or organisational changes being proposed.

11 COMMUNITY SAFETY IMPLICATIONS

11.1 There are no such implications

12 HEALTH AND WELLBEING IMPLICATIONS

12.1 There are no such implications

13 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

13.1 This report has identified changes needed and underway to internal processes. It has also identified that the Council is at particular risk of a costs award when reasons for refusal are not supported by technical consultees.

14 BACKGROUND PAPERS

14.1 There are no additional background papers to the report.

15 APPENDICES

15.1 Appendix A – Extract from Planning Practice Guidance

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.

APPENDIX A. Extract from Planning Practice Guidance

“What type of behaviour may give rise to a substantive award against a local planning authority?”

- Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:
- 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
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner
- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage

- imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the [National Planning Policy Framework](#) on planning conditions and obligations
- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the [National Planning Policy Framework](#), on planning conditions and obligations
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

(This list is not exhaustive).

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