



## Costs Decision

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by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 25.07.2023

Costs application in relation to Appeal Ref: CAS-02358-Q1P5M7

Site address: 12 Corporation Road, Newport, NP19 0AR

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- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
  - The application is made by Newport City Council for a full award of costs against Mr Joe Lane of Lane Property Holding Ltd.
  - The appeal was against the refusal of planning permission for the change of use of upper floors to 3No. self-contained flats (Resubmission following refusal of 21/1287).
  - A site visit was made by the Inspector on 20 June 2023.
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### Decision

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

#### Procedural Matter

2. The Council's application for an award of costs was set out in its Statement of Case. The appellant was offered the opportunity to respond to matters raised within that document. However, despite providing a formal rebuttal to matters relating to noise and amenity, and indeed flood risk, no comments were submitted in respect of the costs application. I shall therefore assess the matters raised within the Council's application for an award of costs against the advice set out in the Welsh Government's Development Management Manual and, in particular, the Section 12 Annex: '*Award of Costs*'.

#### Reasons

3. The Section 12 Annex: '*Award of Costs*' to the Welsh Government's Development Management Manual advises that, irrespective of the outcome of an appeal, costs may only 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.
4. In this case, the Council's application for an award of costs is substantive in nature. In particular, it contends that it has not been possible to confirm whether or not the development would be in accordance with the adopted development plan. It also notes that the appeal follows three other applications, Ref: 21/0472, Ref: 21/0975 and Ref: 21/1287 which were refused by the Local Planning Authority (LPA), and Appeal Ref: CAS-01537-Q4Z8G9 which was dismissed in respect of the same development on the same site (hereinafter referred as the 2022 Appeal). Within this context, it is notable

that the Inspector's decision in respect of the 2022 Appeal found that the development was unacceptable on the basis of flood risk, inadequate living conditions and the lack of a mechanism to deliver affordable housing. As these are broadly consistent with the reasons for refusal in the current appeal, I shall consider each matter in turn.

5. The 2022 Appeal Decision notes that no discrete Flood Consequence Assessment (FCA) was submitted in support of the proposal subject of that appeal. Whilst the FCA submitted as part of the current appeal was found to be flawed, it did attempt to address the previous reasons for refusal which were upheld at appeal. Therefore, despite the findings of my appeal decision, I am not persuaded that unreasonable behaviour has been demonstrated in this respect.
6. With respect to the issue of living conditions, the Council's Notice of Decision stated that *"The proposal has a significant adverse effect on interests of acknowledged importance, namely residential amenity, by reason of inappropriate bin storage arrangements and noise to habitable accommodation. No information has been provided to mitigate these objections..."*. The arguments in respect of bin storage arrangements do not appear to have been raised at the 2022 Appeal. As such, I do not consider that the appeal in respect of this issue was unreasonable.
7. With regards the issue of noise, the absence of any substantive noise evidence was clearly raised as a reason for the Inspector's overall conclusions in the 2022 Appeal. That decision also went on to state that, *"although the appellant contends that mitigation could be secured through the use of a planning condition, given the lack of evidence before me, there is little to demonstrate the efficacy of such measures"*. I have not seen any evidence of the circumstances, or indeed the proposal, being materially changed in the intervening period. I therefore find that the re-running of those arguments does constitute unreasonable behaviour for the purposes of the Development Management Manual.
8. Similarly, the Inspector appointed to determine the 2022 Appeal made it clear that, *"whilst the appellant has confirmed agreement to the heads of terms put forward by the Council in requesting a financial contribution towards affordable housing, this does not constitute a comprehensive legally binding agreement"*. She also went on to state that *"without such a document there is no adequate mechanism before me to secure the required contribution"* before noting that Welsh Government Circular (WGC) 016/2014: *The Use of Planning Conditions for Development Management* (2014) is clear that the use of a planning condition would not be appropriate and that payments should be secured through a planning obligation. There does not appear to have been any effort from the appellant to progress such matters through the current appeal. I therefore find that unreasonable behaviour has also occurred in this respect.
9. Therefore, whilst I have found no evidence of unreasonable behaviour in respect of the issues of flood risk and the storage of refuse, I have found the appellant's behaviour in respect of the issues of noise and the delivery of affordable housing to be unreasonable for the purposes of the Welsh Government's Development Management Manual. Given that the identified unreasonable behaviour resulted in unnecessary cost for the Council in defending the appeal, I find that a partial award of costs is justified in this instance. The application for an award of costs should therefore be allowed to this limited extent, in accordance with the terms set out below.

### **Costs Order**

10. In exercise of the powers under section 322C 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 Mr Joe Lane of Lane Property Holding Ltd. shall pay to Newport City

Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of noise and affordable housing.

11. The Council is now invited to submit to Mr Joe Lane of Lane Property Holding Ltd., 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, an application for a detailed assessment by the Senior Courts Office should be considered.

*Richard E. Jenkins*

INSPECTOR