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## Costs Decision

Site visit made on 24 March 2021

**by Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 May 2021**

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### **Costs application in relation to Appeal Ref: APP/C1570/W/20/3264407 Land behind, the Old Cement Works, Thaxted Road, Saffron Walden, Essex**

- 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 Barkby Real Estate Limited for a full award of costs against Uttlesford District Council.
  - The appeal was against the refusal of planning permission for the erection of 35 dwelling houses.
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### **Decision**

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

### **Reasons**

2. The appellants case is for a full award and is based on both procedural and substantive grounds. In summary it covers the following points:
  - The submission of a viability study with the application is in line with both adopted local policy and Planning Practice Guidance (the Guidance). The viability study's evidence base, method and conclusions were agreed by the Council's appointed consultants. This included the date of the baseline valuation. In turn the viability evidence was endorsed by officers.
  - No counter evidence or clear reason was provided by the Council when this matter was heard by the Committee and the decision made. It was incorrect to state that insufficient information had been included in the report.
3. For the above reasons, the Council behaved unreasonably resulting in the applicant incurring unnecessary expense.
4. The Council has not responded to the application for costs.

### **Conclusions**

5. Planning Practice Guidance (the Guidance) advises that 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 expenses in the process.
6. In this case I have noted the recommendations of the Council officers in the report to Committee. Whilst a planning decision is a matter of judgement and the Committee was entitled not to accept officer's professional advice this should only be made if a sound case could be made for a contrary view.

7. This was not the case in respect of this application. Sufficient evidence was included in the viability report to demonstrate why the scheme included an amount of affordable homes which did not accord with adopted policy.

### **Conclusions**

8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense of the type I have identified above and as described by the Guidance has been demonstrated in respect of the issue of viability.

### **Costs Order**

9. 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 the Uttlesford District Council shall pay to Barkby Real Estate Limited, the costs of the appeal proceedings described in paragraph 8 above.
10. The applicant is now invited to submit to Uttlesford District 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 note on how to apply for a detailed assessment by the Senior Courts Costs office is enclosed.

*Stephen Wilkinson*

INSPECTOR