BRETT INCORPORATED
PLANNING AND DEVELOPMENT SERVICES
LIMITED

30 September 2024

Our Ref.: 1655.3

LPA's Ref.: DC/24/0465

PINS Ref.: APP/Z3825/W/24/3346736

Dear PINS,

## COSTS APPLICATION

**Appeal by Mr & Mrs K Henley HHC Developments Ltd**

**DC/24/0465 - Demolition of existing buildings, cessation of commercial vehicle repair business use, provision of new access and erection of two buildings containing overall 3 x 2-bed dwellings and 2 x 2-bed apartments along with ancillary parking and a utility building for each unit.**

**Site at Paiges Yard, Nep Town, Henfield BN5 9DZ**

1. The NPGG notes, inter alia, that parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably but where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

2. The aim of the costs regime is to:



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*encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case, 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, not to add to development costs through avoidable delay, discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections*.

3. Costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

4. The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774. Unreasonable behaviour in the context of an application for an award of costs may be either:

procedural – relating to the process; or

substantive – relating to the issues arising from the merits of the appeal.

5. 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:

- 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

- acting contrary to, or not following, well-established case law

- if better communication with the applicant would have enabled the appeal to be avoided altogether.

6. This costs application against the LPA arises for the reasons set out in the Appellants Submission Appeal Statement (ASAS) and the appellants response to the LPA's appeal statement of case.

7. Paragraph 28 of the appellants' submission appeal statement (ASAS) dated 20 June 2024 stems from the preceding paragraphs that highlight numerous errors in the validation, processing of and decision on the appeal application. This includes failure to ensure mandatory statutory content that may invalidate the decision and prevent this appeal from proceeding, in which case the Inspector has already been invited to make a full award of costs against the LPA as set out in paragraph 2 of the ASAS.

8. Failure to consider all these matters cannot be put down to a minor oversight. The LPA has been given the opportunity to review its position, including all refusal reasons, during these appeal proceedings but, for whatever reason, it has chosen to remain silent on the matter; either to endorse or reduce the refusal reasons. It is now too late for it to seek to substantiate the planning merits of the refusal reasons in the context of all those considerations it effectively ignored through this costs application.

9. The application was refused under delegation such that the LPA could have, with legal authority, reviewed its position on individual refusal reasons or the scheme as a whole under delegated powers. The appellants could not force the LPA to do so but they acted in all reasonableness by giving the LPA the opportunity to do so and avoid this application for costs but that fell on deaf ears.

10. Paragraphs 27 & 28 of the ASAS state:

"27. It appears the LPA is now in an unenviable position in that it will not be able to demonstrate it acted within the law when it validated the application and that it simply failed to take into account material planning merit case etc that should have been secured (CDAHS) or was otherwise available on the file and had been for more than ample time to be taken into account when the DAAS and decision notice were concluded on 20 May 2024. Accordingly, it is hoped the LPA will, on reflection, review its position in this appeal in the light of all the information and case that it should have had to hand, and did have to hand, when it made its decision and which is now to hand and conclude, on balance, that it should now support the development.

28. Accordingly, an application for an award of costs against the LPA for entirely unreasonable behaviour is not made at this submission stage of the appeal but will be reviewed pending any LPA appeal statement."

11. Having compared the LPA's appeal statement dated 18 September 2024 with its Delegated Applications Assessment Sheet (DAAS) dated 17 & 20 May 2024, it is quite apparent almost the entirety of the LPA's appeal case is a verbatim repeat of the principle points of its DAAS.

12. This suggests the LPA has either not read the ASAS or decided not to comment on it. In these circumstances, the LPA cannot substantiate its refusal reasons in the context of the limited material considerations it took into account when it determined the application nor in the context of this appeal process because it is silent on all the material considerations it did not consider at the application stage but which have been drawn to its attention in the ASAS.

13. Paragraphs 1-28 of the ASAS sets out the primary background to this application for a full award of costs against the LPA for entirely unreasonable

behaviour. For brevity, that is not repeated here. Had it taken into account the wealth of information and material considerations etc it had on its own files in arriving at a decision and been consistent with its approach to noise impact on a residential conversion of an existing building conjoining VBC, there is every reason to suppose the application would have been supported.

14. The appellants consider their application was rejected on spurious grounds that cannot now be substantiated. In hindsight it is also too late for the LPA to substantiate them in connection with planning merits through this costs application. At face value, the LPA has chosen not to review its decision, however slight, on all those material considerations not taken into account when it decided the appeal application but subsequently drawn to its attention during this appeal process.

15. It appears the LPA could not have substantiated an approval without taking all those considerations into account. It is therefore hoped the planning merits appeal will be allowed in the light of all the material considerations put forward in its support and that a full award of costs is made against the LPA primarily on the basis it has not and cannot now substantiate the refusal reasons raised against the appeal development absent of consideration of all material considerations submitted in support of the development.

Yours sincerely,



Simon Brett