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## Costs Decision

Site visit made on 2 July 2014

**by Roland Punshon BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 16 September 2014**

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### **Costs application in relation to Appeals Ref:**

**Appeal A - APP/D2320/A/13/2210500,**

**Appeal B - APP/D2320/A/13/2210506 and**

**Appeal C - APP/D2320/A/13/2210517**

**Jumps Farm, rear of 147 South Road, Bretherton, Chorley, Lancs PR26 9AJ**

- 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 S & A Wignall (the appellants) for a full award of costs against Chorley Borough Council (the Council).
- The appeals were against the grant subject to conditions of planning permissions for:

**Appeal A** - use of Building C as wood workshop with landscape gardening workshop use to be retained.

**Appeal B** - change of use of Building B for storage purposes.

**Appeal C** - change of use of land for storage and recycling in connection with landscape gardening business.

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### **Decision**

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

### **Reasons**

2. Circular 03/2009 *Costs Awards in Appeals and Other Planning Procedures* was cancelled at the government's launch of the Planning Practice Guidance in March 2014. I will make my decision in this case on the basis of the up-to-date guidance.
3. The Planning Practice 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 expense in the appeal process.
4. Paragraph 206 of the National Planning Policy Framework (NPPF) advises that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance advises that one example of the circumstances in which a local planning authority may be at risk of an award of costs is when it has imposed a planning condition which does not satisfy the tests set by paragraph 206 of the NPPF.
5. The drafting of conditions requires considerable care if they are to pass the stringent tests set by the guidance. They need to be precisely tailored to the

development which they seek to control and should take realistic account of existing lawful developments and uses. In my decisions on the subject appeals I have concluded that all of the conditions which are subject to appeal fail to meet one or more of the tests.

6. I have no doubt that, in determining the appeal applications, the Council was trying to achieve a situation where operations on the appeal site did not cause nuisance to residential neighbours and was acting in good faith. However, I am not satisfied that the Council took sufficient care in drafting the appeal conditions. A general lack of precision in the conditions led to circumstances where their requirements were variously unreasonable, unnecessary or unenforceable. In some circumstances, whilst the wording of the conditions was sufficiently precise, I have concluded that the conditions – notably the conditions making the permissions personal to the appellants – were unnecessary, met no clear planning purpose and paid insufficient regard to national guidance. In other cases the faults in the conditions arose from what I consider to be a misinterpretation of specialist evidence or a failure to properly take specialist evidence into account.

#### Conclusion

7. In these circumstances I conclude that the Council did behave unreasonably in imposing planning conditions which failed to satisfy the tests set by paragraph 206 of the NPPF. The appellants should not have needed to resort to appeal proceedings to resolve this issue and therefore were put to unnecessary expense in having to prepare for and undertake the 3 appeal proceedings.

#### Costs Order

8. 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 Chorley Borough Council shall pay to S & A Wignall, the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to the 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.

*Roland Punshon*

INSPECTOR