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Stuart Flaherty
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Stratford-on-Avon District Council

Your Ref:
Our Ref: APP/J3720/W/21/3281972
APP/J3720/Y/21/3281980

Date: 3 January 2023

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78, 89 & 322
LAND AT 221 HIGH STREET, HENLEY-IN-ARDEN, B95 5BG: APPEALS BY MR
IAN O’GORMAN (LOCKLEY HOMES): APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for the Department for Levelling Up, Housing and Communities to refer to the Planning Inspectorate’s correspondence of 10th October 2022 confirming the withdrawal of the above appeals. The appeals were against the decision of Stratford-on-Avon District Council to refuse planning permission of the demolition of existing buildings and erection of 7no dwellings, new vehicular access to Prince Harry Road and associated works.

2. This letter deals with the Council’s application for an award of costs against the appellants as made in correspondence of 13th October 2022. Helen Morris of RCA Regeneration limited, responded on behalf of the appellants in correspondence of 26th October 2022.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 11 and 12 below. The application succeeds to the extent that a partial award of costs is being made.

Basis for dealing with the costs application

4. In planning and enforcement appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of “unreasonable” behaviour, resulting in unnecessary or wasted expense. The applications for costs have been considered by reference to the Planning Practice Guidance on awards of costs (as published on the Gov.uk website under “Appeals”), the appeal papers, the correspondence on costs and all the relevant circumstances.

5. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably by not withdrawing the appeals

sooner, with the result that the Council incurred wasted or unnecessary expense. The sequence of events leading to the withdrawal of the appeals has been carefully examined.

6. The appeals were received by the Inspectorate on 31st August 2021. The Inspectorate's Start letters of 31st May 2022 informed the parties that a hearing would be arranged, and a timetable was set for the submission of appeal documentation. The letter to the appellants' agents warned that withdrawal of the appeals at any stage in the proceedings, without good reason, may result in a successful application for costs and directed them to the costs guidance for further information, which could be found on GOV.UK website. The Council's statement was received by the Inspectorate 11th July 2022. The appeals were withdrawn by the appellants on 7th October 2022.

Conclusions

7. As the appeals have been withdrawn, thus ending the proceedings, the issues arising on it remain unresolved as they have not been tested by an appointed Inspector after assessing all the evidence before him/her. Therefore, it is not possible to assess the reasonableness of either party's case on appeal and the Secretary of State has no further jurisdiction in the matter. The only issue before the Secretary of State to consider therefore is whether or not the appellants acted unreasonably by withdrawing the appeals when they did.

8. Paragraph 054 of the guidance explains that appellants are encouraged to withdraw their appeal at the earliest opportunity if there is good reason to do so. The Secretary of State has to decide whether the appellants had good reason for the withdrawal due to a material change in circumstances relevant to the planning issues arising on the appeals, and, if so, whether they were withdrawn promptly.

9. The right to appeal is a statutory right, but it is expected that it will be exercised in a reasonable manner and as a last resort. When deciding to appeal, appellants have a responsibility to ensure they are in a position to pursue it through to a decision unless a material change in circumstances relevant to the planning issues arising on the appeal occurs. In this case, the Council state there was no material change in circumstances to prompt the withdrawal of the appeals and that they were working proactively with the appellants throughout the application process. For that reason, they are uncertain as to why the appellants withdrew at this stage given that the newer application has not yet been determined. In response to the application the appellants' have said "We acknowledge the Council's claims and confirm our client is prepared to submit to determination of the costs application.". Therefore, on the evidence available, the Secretary of State can reach no other conclusion than the appellants have acted unreasonably. An award of costs will therefore be made.

10. As to the extent of the award, the view is taken that the Inspectorate's letter of 31st May 2022 gave sufficient warning to the appellants, via their agent, that withdrawal of the appeals without good reason, at any time in the appeal process, could result in an award of costs against them. The appellants therefore had adequate opportunity, from that date, to consider his position in relation to the risks of costs. Consequently, it is considered that a partial award of costs from 7th June 2022 is justified. This date allows a nominal period of seven days for the appellants to have fully considered the warning of costs.

FORMAL DECISION

11. For these reasons, the Secretary of State concludes that the appellants acted unreasonably and caused the Council to incur wasted or unnecessary expense as a

result. A partial award of costs is therefore considered justified in the particular circumstances.

COSTS ORDER

12. Accordingly, the Secretary of State for the Department of Levelling Up, Housing and Communities in exercise of his powers under section 250(5) of the Local Government Act 1972, sections 78, 89 and 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that Lockley Holmes shall pay to Stratford-on-Avon District Council their costs of the abortive appeal proceedings before the Secretary of State, limited to the costs incurred from 7th June 2022; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The Council are now invited to submit to Helen Morris of RCA Regeneration Limited, details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to her.

Yours faithfully

G Blake

GEORGIA BLAKE
Authorised by the Secretary of State
to sign in that behalf