The Planning Inspectorate

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Date: 21 November 2013

Dear Madam

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 AND 320
LAND AT GRESTY GREEN ROAD/CREWE ROAD, SHAVINGTON CUM GRESTY, CREWE, CHESHIRE: APPEAL BY BLOOR HOMES NORTH WEST: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspectorate's letter of 29 July 2013 confirming the withdrawal of the appeal by Bloor Homes Ltd. The appeal was against the Council's decision of 9 March 2012 to refuse planning permission for development of 165 houses, access, landscaping and parking on land described above.

2. This letter deals with your application, on behalf of Morning Foods Ltd, for an award of costs against the appellants, made in correspondence of 7 August and 16 September 2013. Mr Christopher Young (Counsel for the appellants), replied on behalf of the appellants in correspondence of 9 September 2013. As these costs representations have been made available to the parties, it is not proposed to summarise them in any detail. They have been carefully considered.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 16 and 17 below. The application succeeds to the extent that a partial award of costs is being made against the appellants.

Basis for determining the costs application

4. In planning appeals, the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are only awarded on the grounds of "unreasonable" behaviour, resulting in any wasted or unnecessary expense.

5. Published policy guidance for such cases is in CLG Circular 3/09 (referred to below as the "Costs Circular"). The application for costs has been considered with reference to this guidance, the appeal papers, the costs correspondence and all the relevant circumstances.

Reasons for the decision

6. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably by withdrawing the appeal when they did with the result that the Rule 6 Party incurred wasted or unnecessary expense in preparing to resist the appeal at the abortive inquiry. The policy guidance in paragraphs B43 to B50 and section D of the Costs Circular is particularly relevant. The sequence of events leading to the withdrawal of the appeals has therefore been carefully examined.

7. The appeal was received by the Inspectorate on 6 July 2012. The Inspectorate's letters of 20 July 2012 informed the parties that the appeals would be dealt with by way of an inquiry. The appellant's agents warned of the risk of costs being awarded if an appeal is withdrawn without good reason and directed him to the pamphlet *"Costs Awards in Planning Appeals,* which could be found on the Planning Portal. The Inspectorate's letters of 26 July 2012 informed the parties that an inquiry had been arranged to take place on 2 October 2012 Morning Foods Ltd requested Rule 6 status on 6 August 2012. The Inspectorate's reply of 9 August 2012 set out the time-table for receipt of documents. The Council's and the appellants' statements were received by the Inspectorate on 31 August 2012. Morning Food Ltd's statement was received on 6 September 2012. Their proof of evidence was received by the Inspectorate on 11 September and the appellants' was received on 12 September 2012. The inquiry was cancelled on 21 September 2012. The Inspectorate's letters of 25 October 2012 informed the parties an inquiry had been arranged to tale place on 15 January 2013. The inquiry was adjourned and the Inspectorate' letters of 10 April 2013 confirmed that it would resume on 15 October 2013. The appeal was withdrawn on 29 July 2013.

Conclusions

8. Paragraph B46 of the Costs Circular warns that, if an appeal is withdrawn without any material change in the planning authority's case or any other material change in circumstances, relevant to the planning issues arising on the appeal, appellants are at risk of an award of costs against them if there are no other exceptional circumstances and the claiming party can show that they have incurred quantifiable wasted expense as a result. The Secretary of State has to decide whether the appellants had good reason for the withdrawal due to a material change in circumstances or whether there are any other exceptional circumstances.

9. In this case, the appeal was withdrawn some 16 months after it was submitted, The appellants' decision to withdraw the appeal when they did needed to be weighed against the risk of an award of costs. This risk was brought to the appellants' attention, via his agents, in procedural correspondence from the Inspectorate. The view is taken that the appellants would, or should, have been aware that by withdrawing the appeal when they did Morning Foods Ltd as a Rule 6 party in the appeal would have incurred preparation costs in resisting the appeal in accordance with the Inspectorate's set timetable in preparation for the abortive inquiry.

10. It is clear from the evidence that the reason given for withdrawing the appeal was due to the events of the site visit of 15 January 2013 in respect of noise levels, although the initial reason given was for "commercial reasons". Mr Young contends that as the noise levels were so high it amounted to a significant change in the evidence base and caused the appellants to reconsider their position on the appeal. They concluded that the appeal now stood little prospect of succeeding in view of the noise readings and consequently they decided to withdraw it. Mr Young implies that what took place at the site visit was staged, with noise being manufactured, and was not a true reflection of what the situation normally is, in view of the findings from previous visits made where the noise readings were significantly lower.

11. However, in view of the fact that the inquiry was due to reconvene it is not clear why Mr Young's concerns about the events at the site visit were not submitted to the Inspectorate. Given that noise readings from previous visits had been submitted in evidence, the Inspector could have compared the readings and assessed for himself whether the site visit readings of 15 January 2013 were untypical and/or unreliable. Added to this, it was open to Mr Young and/or the acoustic consultant to conduct another site visit soon after the appeal visit in order to take further readings and add more weight to his concerns about the events at the appeal site visit and to the appellants' case on appeal. By deciding to withdraw the appeal and not have their case tested by the Inspector, the appellants effectively vacated their position.

12. Furthermore, it is noted that the appeal was not withdrawn for some 6 months after the site visit took place. Mr Young explains that in this time, noise mitigating schemes and smaller proposals were being considered as well as negotiations with the land owner on how to progress. Nevertheless, the Secretary of State considers 6 months to be an unreasonable length of time after the event that prompted the appellants to review their position, to reach the conclusion that the appeal should be withdrawn. It is noted that in that time, the appellants' agents' made an offer to the Council that the appellants would withdraw the appeal if the Council and Morning Foods Ltd agreed to bear their own costs. The letter states that if such an agreement is not reached, then the appellants will continue to pursue the appeal to final determination. However, such an agreement was not reached, yet the appellants still withdrew the appeal.

13. Having decided to appeal it was the appellants' responsibility to ensure they pursued it through to a decision unless there was a material change in circumstances relevant to the planning issues arising on the appeal to justify its withdrawal. The Secretary of State does not consider that the noise readings at the site visit of 15 January 2013 amounted to such a material change of circumstances since the appeal was submitted to justify the appellants' decision to withdraw the appeal when they did.

14. In view of this, the Secretary of State concludes that this was not a case where the Council changed or modified their stance on the appeal and he does not consider that there is any evidence of a material change in circumstances relevant to the planning issues arising on the appeal or any other exceptional circumstances to justify the withdrawal within the scope of paragraph B46 of the Costs Circular. Consequently, it is concluded that the appellants acted unreasonably by withdrawing the appeal when they did, causing the Council to incur wasted or unnecessary expense in preparing to resist it at the abortive inquiry. The Secretary of State is satisfied that as Morning Foods Ltd as a Rule 6 party in the

appeal meet the tests set out in Section D of the Costs Circular and an award of costs should be exceptionally made their favour in the particular circumstances.

15. As to the extent of the award, the view is taken that the award of costs should run from 9 August 2012, which is the date of the letter to Morning Foods Ltd informing them of the time-table for receipt of their appeal documents. As the appellants' agents were sent a copy of that letter, the appellants would, or should, have been aware that Morning Foods Ltd as a Rule 6 party would have been incurring expense in the appeal process from that date.

FORMAL DECISION

16 For these reasons, it is concluded that a partial award of costs against the appellants, on grounds of "unreasonable" behaviour resulting in wasted or unnecessary expense, is justified in the particular circumstances.

COSTS ORDER

17. Accordingly, the Secretary of State for Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 320 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that Bloor Homes North West shall pay to Morning Foods Ltd their costs incurred in the appeal, limited to those incurred from 9 August 2012 (inclusive); such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. You are now invited to submit to Mrs Alison Freeman of Emery Planning Partnership Ltd, details of those costs with a view to reaching agreement on the amount. A copy of this letter has been sent to her. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for detailed assessment by the Senior Courts Costs Office is enclosed.

19. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for a judicial review. This must be done within 6 weeks from the date of this decision.

Yours faithfully

KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf