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Your Ref:

Our Ref: APP/H1033/A/12/2187544  
APP/H1033/E/12/2187545

Date: 27 June 2013

Dear Sir

**LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)  
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 & 322  
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 –  
SECTION 89: LAND AT 33 ST JOHN’S ROAD, BUXTON, DERBYSHIRE: APPEAL  
BY SYCAMORE DEVELOPMENTS: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Inspector’s decision of 22 April 2013. This dismissed the appeal by Sycamore Developments Ltd against the decision of High Peak Borough Council to refuse planning permission and listed building and conservation area consent for demolition of the existing dwelling and garage and erection of a two-storey building, with two storey wings, comprising six apartments, together with associated car parking, landscaping and ancillary works on land described above.

2. This letter deals with your application on behalf of the appellants’ for an award of costs against the Council. The application was made in correspondence of 18 January and 3 May 2013. The Council responded in correspondence of 12 February 2013. As these representations have been made available to the parties I do not propose to summarise them in any detail. The Inspector has submitted a report with to the Secretary of State with a recommendation on the application for costs. The costs report is enclosed and forms part of this decision.

**Procedural matters**

3. For the avoidance of doubt, while the Inspector’s appeal decision concerns 4 linked appeals, the costs application is solely in relation to the appeal references shown above.

**Summary of decision**

4. The formal decision and costs order are set out in paragraphs 12 and 13 below. The application succeeds and a partial award of costs against the Council is being made.

## **Basis for determining the costs application**

5. 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.

6. 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 Inspector's costs report and all the relevant circumstances.

## **Reasons for the decision**

7. All the available evidence has been carefully considered. The decisive issue is whether or not the Council's reasons<sup>1</sup> for refusing the applications were unreasonable and unsupported by evidence, with the result that the appellants incurred wasted or unnecessary expense in having to resist them on appeal. The policy guidance in paragraphs B15 to B29 of the Costs Circular is particularly relevant.

## **Conclusions**

8. Much of the application for costs concerns the Council's conduct in dealing with the applications. However, as the Inspector points out, the procedures adopted by a planning authority for determining planning applications are generally a matter for the authority within the context of local government accountability. Any complaints concerning the Council's conduct or their adopted procedures in determining planning applications should be addressed through their established complaints procedures.

9. Paragraph B17 of the Costs Circular explains that if one reason for refusal is not properly supported, but substantial evidence has been produced in support of the others, a partial award of costs may be made against the authority.

10. The Secretary of State has carefully considered the evidence and the Inspector's report and sees no good reason to disagree with her findings. In matters concerning the visual effect a development may have on the character and appearance of the surrounding area a large element of subjective judgement is involved, and as such it is inevitable that opinion will vary. Nevertheless, it was a judgement the Council were entitled to reach. The Secretary of State is satisfied that the Council adequately conveyed their objections on this reason in their appeal correspondence. Therefore, he does not consider that the Council acted unreasonably in relation to the first reason for refusal.

11. However, turning to the second reason for refusal, for the reasons given by the Inspector in paragraphs 8 to 11 of her costs report, the Secretary of State takes the view that the Council did not produce evidence to support its stance at appeal and therefore did not substantiate the second reason for refusal. Consequently, he concludes that the Council acted unreasonably and caused the appellants to incur wasted or unnecessary expense in having to resist this reason for refusal on appeal.

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<sup>1</sup> Reason 1: The Proposed development, by reason of its scale and external appearance, will be harmful to the character and appearance of the Conservation Area and the setting of the adjacent grade 11\* registered historic park, contrary to Policy BC5 of the adopted High Peak Local Plan 2008 and advice contained in the National Planning Policy Framework.

Reason 2: Inadequate survey information regarding the presence of bats on the site and the proposed measures for mitigation has been submitted to the Local Planning Authority.

## FORMAL DECISION

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

## COSTS ORDER

13. 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 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that High Peak Borough Council shall pay to Sycamore Developments their costs incurred in the appeals; limited to those costs incurred solely in relation to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The Council are now invited to submit to Sue Ashworth, Principal Planning Officer at High Peak Borough Council, 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.

15. 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 promptly.

Yours faithfully

*K McEntee*

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