

CABINET

10 NOVEMBER 2023

REPORT OF THE PORTFOLIO HOLDER FOR HOUSING AND PLANNING

A.5 CLAIM OF COSTS IN RESPECT OF DEVELOPMENT AT ST. JOHN'S NURSERY, CLACTON-ON-SEA

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the Cabinet's decision on making a payment to the applicants for development at St. John's Nursery, Clacton-on-Sea following an award of costs by the Planning Inspector in deciding to overturn the Council's decision to refuse planning permission on appeal and finding the Council to have acted unreasonably.

EXECUTIVE SUMMARY

Background

Planning application Ref 21/01000/FUL, dated 3 June 2021 at 700 and 762 St Johns Road and St Johns Nursery, Clacton-on-Sea, Essex CO16 8BP was for demolition of nursery buildings and dwelling house (700 St Johns Road) and erection of 180 residential units (including affordable housing) comprising 10 two bed houses, 83 three bed houses, 24 four bed houses, 15 five bed houses, 16 one-bedroom apartments and 24 two-bedroom apartments and 8 live work units (mixed commercial units totalling 1,064 square metres with flats above), and roads, open space, drainage, landscaping and other associated infrastructure. This was refused by notice dated 18 May 2022 following a resolution by the Council's Planning Committee on 10th May 2022.

Subsequently, the decision was appealed under Appeal Ref: APP/P1560/W/22/3308647 and following a hearing held on 7th March 2023 was allowed by the Planning Inspectorate on 22nd March 2023 In addition, a full award of costs was granted by the Planning Inspector against the Council.

The Inspector allowed the application for an award of costs against Tendring District Council based on the Planning Practice Guidance (PPG), on 6 out of the 7 grounds, which permits costs to be awarded against a party that has acted unreasonably and caused the other party to incur unnecessary and wasted expenses in the appeal process.

On examination of both the Appeal Decision and Cost Decision (attached in full at Appendix 1 and 2) the Planning Inspectorate's reasons for a full award are summarised below.

- The Council's insistence on refusing planning permission based on outdated data for the Transport Assessment (TA), despite the applicant's submission of additional information that demonstrated the validity and robustness of the TA and failure to properly further survey data with the appeal related to traffic and highway safety grounds.

- The Council's lack of consistency in decision-making, as evidenced by their previous acceptance of a similar development on the same site in 2020, which utilised the same proposed access.
- The Council's failure to provide clear explanation or justification for a change in their approach to assessment, specifically regarding concerns related to light, vibration, and noise compared to the previous scheme and the appeal scheme.
- The Council's objections to the proposed development without proper consideration of how these concerns could be addressed through conditions, especially given the background provided by the previous 2020 scheme and the overall suitability of the location for development.

As a result of these actions, the Inspector found the Council to have acted unreasonably for its first and second grounds of refusal, and the remaining reasons for refusal could have been addressed prior to the grant of planning permission and ordered it to pay the full costs of the appeal proceedings to the applicants Kelsworth Limited. The Council has been invited to reach an agreement with the applicant regarding the amount of the costs; otherwise, the costs will be assessed in the Senior Courts Costs Office.

Cost Claim

In conclusion, the sum of money being claimed by the applicants, reduced from a higher figure following challenge by Officers, currently stands at £101,886.00.

RECOMMENDATION(S)

That Cabinet:

- (a) agrees to pay the sum of £101,886.00 to Kelsworth Limited, in respect of its claim for costs, as ordered by the Planning Inspectorate on 22nd March 2023;**
- (b) subject to decision on a), notes that the above payment will be made from the budget for Planning Appeals Costs; and**
- (c) supports the outcome and impact of the Appeal Decision and costs Award being included within an annual report to Planning Committee on appeal decisions.**

REASON(S) FOR THE RECOMMENDATION(S)

Failure to pay the award of costs will result in Tendring District Council being required to engage with the Senior Courts Costs Office that may result in reduced or increased costs. Any reduction of costs or increase in cost award would need to be balanced against the increase in costs to the Council to proceed further and defend any position. Officers are not able to find an adequate robust position for defence likely to reduce the cost claim sufficiently that would justify proceeding to the Senior Courts.

Failure to promptly pay the awarded costs would necessitate Tendring District Council's engagement with the Senior Courts Costs Office, potentially leading to adjustments in the costs awarded—either reduced or increased. It is crucial for the Council to carefully consider

the implications of such an action, weighing the possible reduction in costs against the potential expenses incurred in further defending its position.

After thorough examination that removed some costs, officers have been unable to identify a sufficiently robust defence that would likely result in a significant reduction of the cost claim, justifying the pursuit of the matter in the Senior Courts. The associated expenses and uncertainties involved in this course of action need to be taken into account.

In light of these considerations, it is advisable for the Council to evaluate the cost claim objectively and adhere to the awarded amount to avoid unnecessary complications and potential additional costs. Timely payment of the awarded costs will ensure a smoother resolution of the appeal process, bringing closure to the matter and minimising any further financial burden on the Council.

ALTERNATIVE OPTIONS CONSIDERED

Given the legal requirements, no alternative option to paying the award of costs or taking the claim to the Senior Courts is available.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Council's current (but soon to be updated) Corporate Plan 2024-28 identifies, under the heading of Strong Finances and Governance, a balanced budget and effective and positive governance as priorities. It also identifies effective regulation and enforcement under 'Delivering High Quality Services' and effective planning policies under the heading 'Building Sustainable Communities for the Future'. The outcome of this planning appeal and the award of costs against the Council demonstrates the potential implications of departing from established planning policies without suitable justification or evidence.

OUTCOME OF CONSULTATION AND ENGAGEMENT

N/a

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	YES	If Yes, indicate which by which criteria it is a Key Decision.	<input type="checkbox"/> Significant effect on two or more wards <input checked="" type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior	25 September 2023

		to the meeting date)	
X	The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:		
<p>The Planning Inspector's decision to award costs against the Council demonstrates the importance for decision makers on planning applications to base their decisions on grounds that are both defensible and reasonable. Significant costs can be incurred by both applicants and the Local Planning Authority, in defending their position on appeal and, if one party is found to have acted in an unreasonable manner in their approach they have taken, the Planning Inspectorate has the power, not only to overrule the authority's decision, but to also award costs to compensate for any wasted expenditure.</p> <p>It should be noted that the cost to the authority set out in this report represents only the unnecessary costs incurred by the appellants - it does not include the costs, including Officer time, to the Council in defending its position.</p>			
FINANCE AND OTHER RESOURCE IMPLICATIONS			
<p>Although subject to Cabinet's decision as highlighted within the recommendations above, an initial budget of £101,900 to respond to the costs associated with planning appeals was agreed by Cabinet on 6 October 2023 as part of the Financial Performance Report for Quarter 1 2023/24.</p> <p>This budget is therefore available to meet the cost set out in the recommendations above.</p>			
X	The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:		
<p>In terms of the wider impact on the Council's financial position, it is recognised that Local Authorities find themselves in very difficult circumstances in terms of managing the expectations from local residents against those of developers when major planning applications are considered. Although underpinned by key planning considerations such as those set out elsewhere in this report, exploring options to find the right balance will be important looking forward, especially given the Council's challenging financial position forecast over the coming years.</p> <p>If further costs arise from other potential planning appeal decisions during the remainder of the year, additional funding will need to be identified as the existing budget would be depleted by the costs set out in the recommendations above.</p>			
USE OF RESOURCES AND VALUE FOR MONEY			
The following are submitted in respect of the indicated use of resources and value for money indicators:			
A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;			
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and		The Planning Committee Reports do include a Finance Implications paragraph, which states Local Finance considerations are a matter to which local planning authorities are to have	

	regard in determining planning applications, as far as they are material to the application.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	

MILESTONES AND DELIVERY

Would require immediate payment.

ASSOCIATED RISKS AND MITIGATION

As outlined above.

EQUALITY IMPLICATIONS

None

SOCIAL VALUE CONSIDERATIONS

None

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

None

OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	None
Health Inequalities	None
Area or Ward affected	None

APPENDICES

Appendix 1. Appeal Decision
Appendix 2. Costs Decision

REPORT CONTACT OFFICER(S)

Name	John Pateman-Gee
Job Title	Head of Planning and Building Control
Contact:	Email: jpateman-gee@tendringdc.gov.uk