

Appendix B

Appeal by Ms Claire Hancock

Land adjacent to Boythorpe Avenue, Chesterfield.

CHE/21/00171/FUL

1. Planning permission was refused on 31st August 2022 by Planning Committee against the advice of officers for the erection of a pair of semi detached dwellings on land adjacent to Walton Walk/Boythorpe Avenue. An appeal against the decision has been allowed by the written representation appeal method and the applicant has sought a costs award against the Council.
2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. The type of behaviour that can lead to a costs award includes both substantive and procedural matters relating to issues arising from the planning merits of the appeal or relating to process.
3. The applicant set out that the Council has behaved unreasonably by not producing evidence to substantiate its decision. In relation to the first reason for refusal, the Council's Statement provides a justification for its decision. At paragraph 1.4, it explained the Council's reasoning and although this is brief, it does justify its concerns in explaining that it was the proposal presenting as a single storey development, where the prevailing character of the area is of two storey buildings. Such matters relating to character and appearance involve an element of judgement, and the Council was entitled to exercise its planning judgement as it saw fit. Although the inspector did not share the Council's assessment of the appeal proposal in relation to this issue, he did not consider the Council acted unreasonably by making vague, generalised or inaccurate assertions.
4. In relation to the second reason for refusal on highway safety matters, whilst the Council set out an explanation of its concerns, it has not provided an objective analysis of why the proximity of the proposal to a junction or the presence of on-street parking would result in highway safety concerns. This is especially the case given the Highway Authority had not

objected to the proposal, and the Council should have explained why it had departed from this advice, which it failed to do. The Council has acted unreasonably in this regard.

5. The applicant has also referenced the Council's decision making during their consideration of the application subject of this appeal, and in particular the proceedings at Planning Committee and the Member's site visit. It is clear based on the Council's response to the complaint that was made to them, that there were certain shortcomings. Whilst this is regrettable, it is evident that the Council would have refused planning permission on grounds relating to character and appearance and the inspector did not therefore find the procedural shortcomings has resulted in unreasonable behaviour which has caused another party to incur unnecessary or wasted expense.
6. The applicant stated that costs were incurred in making design revisions during lengthy discussions with the Council. The inspector did not however consider the expense associated with this work was unnecessary or wasted, as such discussions and amendments are a normal part of the process in the consideration of an application, in order to, as the applicant has stated, reach the best possible design for a site.
7. Although an appeal would have been necessary in relation to the first reason for refusal, the applicant has been required to address highway safety matters in the appeal submission. The applicant has therefore incurred unnecessary or wasted expense in this regard and a partial award is justified.
8. The inspector therefore found that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified and 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 Chesterfield Borough Council shall pay to Ms Claire Hancock (RTH Projects), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in

relation to the second reason for refusal relating to highway safety.