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Your Ref: 20/00341
Our Ref: APP/B9506/X/20/3258440
Date: 25 February 2022

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 195 AND 322
LAND AT DEERS LEAP CARAVAN PARK, LINWOOD, RINGWOOD BH24 3QX
APPEAL BY GORAL PROPERTIES LTD: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Levelling-Up, Housing and Communities to refer to the Planning Inspectorate's letter of 30 July 2021 confirming withdrawal of the appeal by Goral Properties Ltd. The appeal was against the decision dated 10 July 2020 by the New Forest National Park Authority to refuse to grant a lawful development certificate (LDC) in respect of "Proposed use for permanent residential caravan park in accordance with the plans submitted as part of application 20/00341", concerning land described above.
2. With apology for any delay this letter deals with the Park Authority's application, as arising from the withdrawal of the appeal, for an award of costs against the appellants. The application was made in written correspondence dated 4 August 2021. The appellants' agent, Ben Eiser, replied on 11 August 2021. Although the Inspectorate invited the Park Authority to submit further written comments no response was received. As the costs representations have been made available to the parties it is not proposed to summarise them in detail. They have been carefully considered along with all the available evidence.

Summary of the decision

3. The application fails and no award of costs is being made. The Formal Decision is at paragraph 17 below.

Basis for determining the costs application

4. In LDC appeals, as for appeals in general, 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.
5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party in proceedings which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and

the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of the current Government guidance (as published on the Gov.uk website under "Appeals"), the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for decision

7. All the available evidence has been carefully considered. The decisive issue is considered to be whether or not the appellants acted unreasonably, with the result that the Council were put to unnecessary or wasted expense, by the combination of their decision to submit the appeal and to then withdraw it. The guidance at paragraphs 052 to 054 of the published costs policy guidance is particularly relevant. Paragraph 054 warns that if an appeal is withdrawn without any material change in the Council's case or any other material change in circumstances relevant to the substantive issues arising on the appeal, an appellant is at risk of a successful application for an award of appeal costs.

8. The sequence of events leading to the withdrawal of the appeal has been carefully examined. It is noted that the appeal, accompanied by statement of case, was made on 27 August 2020. On 16 November 2020 the Inspectorate's "start date" procedural letters informed the principal parties that the appeal would be determined via an exchange of written representations and a site inspection¹ by a Planning Inspector. A timetable was set for the submission of appeal documentation, including statements of case, and the parties' attention was drawn to the published costs policy guidance. The parties proceeded to submit their statements of case and final comments. The Inspectorate's e-mail of 10 July 2021 then drew the parties' attention to a recent High Court decision² (and the appeal decision ref: 3217988 on which it was based) as likely to be relevant to the appeal.

9. In response to the Inspectorate's request the parties submitted written comments regarding cited High Court decision. The Council referred to two key issues namely, (1) the description and the use of conditions, and (2) material change of character, and the Council stated that the appeal decision for the Barton Park Estates Ltd case, as supported by the High Court judgment, was relevant to the Deers Leap case. In their response the appellants commented that the Court's approach endorsed their approach in the appeal.

10. It was then on 29 July 2021 that the Inspectorate informed the parties that the appointed Inspector had looked at the submissions and was *"of the view that the recent High Court decision in Norfolk Caravan Park Limited v SSHCLG and Broadland District Council [2021] and the appeal decision (PINS reference 3217988) on which it was based may be relevant to this case"*. The parties' comments were sought again. The appellants then notified, that same day, that *"following the judgment of NCP v SSCLG the appellant has reviewed their case and their position. In the light of this judgment the appellant wishes to withdraw the appeal"*.

11. **In support of the costs application** the Council stated that the appellants had pursued an appeal for an application which clearly and fundamentally represented an incorrect interpretation of the planning legislation and went against recent appeal cases and High Court judgments (as referenced) for similar proposals. The action taken by the appellants met the circumstances set out in the costs policy guidance for the award of costs. The Council had incurred unnecessary or wasted expense in the appeal.

12. **In response to the costs application** the appellants stated that the appeal was withdrawn on 29 July 2021 following receipt and consideration of the Norfolk Caravan Park judgment issued on 28 July 2021. The withdrawal was for good reason and was made promptly in response to the judgment. With reference to the other judgments the appellants

¹ A site visit date of 3 August 2021 was subsequently notified

² Barton Park Estates Ltd v SSHCLG and Dartmoor NPA [2021] EWHC 1200 (Admin)

had reviewed their position following the Barton Park judgment but it contained distinguishable facts and did not contain any aspects which altered the arguments for this appeal. The appeal decision (not a High Court judgment) for Gundry's Farm also related to distinguishable facts. It was a matter of disagreement between the parties concerning the judgment and appeal decision but it was not credible to suggest that the appeal had no prospect of success. The appeal was pursued in a reasonable manner and had a reasonable prospect of success – the lodging and pursuit of the appeal was not unreasonable. Before the appeal could be determined a Court judgment, considered relevant to the appellants' case, was published. The appellants had acted promptly to review their case and to withdraw the appeal and had not acted unreasonably.

Conclusions

13. All the available evidence has been carefully examined. While the Council allege that the appeal was unreasonably made and pursued it is noted that this does not appear to be a case where there was any prior indication that an application for costs was likely to be made on this basis. The alleged unreasonableness was made only following the withdrawal of the appeal.

14. As the appeal was withdrawn during the course of the appeal proceedings the Secretary of State does not have the benefit, in terms consideration of the relative merits of the parties' cases, of a Planning Inspector's appeal decision. In the circumstances it is considered difficult to conclude that the appeal was unreasonably made and pursued at the outset. It is considered a matter of conjecture as to the outcome of the appeal and it is not, in the particular circumstances, for the Secretary of State to provide any indication about the merits of the appeal via consideration of the costs application. Jurisdiction in the appeal proceedings ended with the withdrawal of the appeal.

15. As regards the decision to withdraw the appeal the Secretary of State concludes that this resulted from a material change of circumstances after the appeal had been made. The Planning Inspectorate had drawn attention (and sought the parties' comments) regarding High Court judgments for similar LDC cases in July 2021. It was after this that the appellants reviewed their case on appeal and decided to withdraw. Prior to this it seems the appellants considered that they had an arguable case and were prepared to proceed with the appeal, on the basis made, to a determination.

16. The appeal was withdrawn promptly following the Inspectorate's communication of 20 July 2021 concerning the High Court decision for the Norfolk Park Ltd case. The Secretary of State also notes that the Council did not contest, via the further opportunity allowed by the Inspectorate to comment, the matters stated in the appellants' response to the costs application including their argument that they had not acted unreasonably. In the circumstances described, and on the information available, the conclusion drawn is that the appellants did not act unreasonably.

FORMAL DECISION

17. For these reasons the Secretary of State concludes that an award of costs on grounds of unreasonable behaviour resulting in unnecessary expense is not justified in this case.

18. A copy of this decision is being sent to the appellants' agent.

Yours faithfully

John Gardner

Authorised by the Secretary of State
to sign in that behalf

