

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

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**REPORT TO:** Development and Conservation Control Committee  
**AUTHOR/S:** Development Control Quality Manager

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7<sup>th</sup> June 2006

### **Department of The Environment Circular 8/93, Award of Costs in Planning and Other (Including Compulsory Purchase Order) Proceedings**

#### ***For Information***

#### **Purpose**

1. To appraise and to remind the Committee of the contents of Circular 8/93 published on 29<sup>th</sup> March 1993.

#### **Background**

2. The power to award costs is available at public inquiries and informal hearings.
3. Costs may also be awarded in the following cases determined by written representations and a site inspection:
  - (a) Enforcement (including Listed Building enforcement) notice appeals;
  - (b) Appeals relating to certificates of lawful development;
  - (c) Tree replacement enforcement notice appeals;
  - (d) Appeals against hazardous substances contravention notices.
4. The principal reason for reporting this Circular to Committee on a regular basis is to remind Members that each reason for refusal must be substantiated by evidence at appeal. Costs may be awarded against the Authority if a reason for refusal is not properly supported. The Circular indicates that Authorities are at risk of an award of costs against them, on appeal, if for example, they:
  1. Fail to comply with normal procedural requirements for inquiries or hearings, including compliance with relevant Regulations;
  2. Fail to provide evidence, on planning grounds, to substantiate each of their reasons for refusing planning permission, including reasons relying on advice of statutory consultees; or to demonstrate that they had reasonable grounds for considering it expedient to issue an enforcement notice;
  3. Fail to take into account relevant policy statements in Departmental guidance or relevant judicial authority;
  4. Refuse to discuss a planning application or provide requested information or seek additional information, as appropriate;
  5. Refuse permission for a modified scheme when an earlier appeal decision indicated this would be acceptable, and circumstances have not materially changed;
  6. Fail to carry out reasonable investigations of fact, or to exercise sufficient care, before issuing an enforcement notice;

7. At a late stage, introduce an additional reason for refusal, or abandon a reason for refusal, or withdraw an enforcement notice unjustifiably;
8. Impose conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant;
9. Pursue unreasonable demands or obligations in connection with a grant of permission;
10. Fail to renew an extant or recently expired planning permission, without good reason; and
11. Unreasonably refuse to grant permission for reserved matters or pursue issues settled at outline stage.

### **Considerations**

5. Since my report of 7<sup>th</sup> July 2004 there have been twelve applications for costs determined by the Planning Inspectorate:
6. Nine applications against the Council were determined. Only two were successful. These related to:

- (a) The unreasonable imposition of a personal condition for a mobile home at The Cinques, Gamlingay.

The application was allowed since the Council could not demonstrate in evidence that there were strong compassionate or other personal grounds as required by Circular 11/95, "The use of Conditions in Planning Permissions"; and

- (b) The withdrawal of an enforcement notice regarding the material change of use of a storage unit at Cambridge Road, Milton to retail sales and associated showroom.

The planning Inspectorate highlighted the advice in PPG18, which advises that where a small business is concerned, local authorities should first discuss the operation with the owner. When an enforcement notice is withdrawn, the Secretary of State will have regard to the reasons for withdrawal in order to assess whether any material change of circumstances has occurred since the notice was issued. The Inspectorate's decision letter goes on to state "it is difficult to escape the conclusion that the Council did not take sufficient care in gathering and evaluating the evidence on which they based their judgement that this breach of planning control would unacceptably affect public amenity". The Council has not shown that it had reasonable grounds for considering it expedient to issue the notice. As a result, the appellant had incurred unnecessary costs.

7. Three applications against appellants were determined. Two were successful:
  - (a) The first related to the use of land at Fen Road, Chesterton (Milton Parish) for a tropical plant nursery and for retention of a caravan. The appellant had not supplied an adequate business plan to enable a financial appraisal to be carried out in accordance with Planning Policy Statement 7: Sustainable Development in Rural Areas. This amounted to unreasonable behaviour.
  - (b) In the second case, involving an appeal against the refusal of outline planning permission for residential development at Impington Lane, Impington, the Council claimed that the appeal had no prospect of success given that marketing of the premises fell well short of what was required and that flood risk had not been adequately resolved.

The Inspector agreed. By the time of the Informal Hearing the information of marketing and floodrisk was still substantially incomplete.

## **Summary**

8. To minimise the risk of suffering an award of costs, the following factors should be borne in mind:
- (a) Reasons for refusal must be capable of being defended at appeal;
  - (b) Relevant evidence must be submitted at appeal to substantiate each reason for refusal;
  - (c) The Authority should seek independent advice or evidence in advance of refusing an application if the comments of a statutory consultee are not to be followed;
  - (d) Relevant information should be sought at the application stage rather than relying upon its absence as a reason for refusal;
  - (e) The Authority should be willing to negotiate if an objection is capable of being resolved;
  - (f) A modified scheme should not be refused where an earlier appeal decision indicated it would be acceptable, and circumstances have not materially changed; and
  - (g) Conditions should not be imposed which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

**Background Papers:** the following background paper was used in the preparation of this report:

- Department of the Environment Circular 8/93

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