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## Appeal Decisions

Site visit made on 24 September 2019

**by Jonathon Parsons MSc BSc DipTP (Cert Urb) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20<sup>th</sup> December 2019**

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### **Appeal A Ref: APP/X0415/W/17/3191276 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Visao Ltd against the decision of Chiltern District Council.
- The application Ref CH/2017/1552/FA, dated 11 August 2017, was refused by notice dated 9 November 2017.
- The development proposed is the retention of Nos 274 and 274A, two storey extension to each, and one two bedroom detached house, one three bedroom detached house, and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access.
- This decision supersedes that issued on 30 August 2018. That decision on the appeal was quashed by order of the High Court.

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### **Appeal B Ref: APP/X0415/W/19/3231699 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Visao Ltd against the decision of Chiltern District Council.
- The application Ref PL/18/4107/FA, dated 6 November 2018, was refused by notice dated 25 March 2019.
- The development proposed is the demolition of Nos 274 and 274A, the erection of two three bedroom semi-detached and one two bedroom detached house, one three bedroom detached house and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access.

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## Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for the demolition of Nos 274 and 274A, the erection of two three bedroom semi-detached and one two bedroom detached house, one three bedroom detached house and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access at 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG in accordance with the terms of the application, Ref PL/18/4107/FA, dated 6 November 2018, subject to the following conditions on the attached schedule at the end of this decision.

## Procedural Matters

3. As set out above there are two linked appeals on this site. In appeal A, the two existing dwellings on plots 2 and 3 would be retained and extended, and they would back onto the side of an adjoining new dwelling. In appeal B, the

existing dwellings on the same plots would be demolished and replaced, and they would be re-orientated such that they would flank onto the adjoining new dwelling. This would result in larger and longer gardens for these two dwellings. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. In appeal A, the Council has indicated that an access arrangement plan (AAP)<sup>1</sup> was not considered in their decision on the planning application. However, the AAP does not materially change the nature of the development by virtue of being a revision to an earlier version and it seeks to address a highway issue raised in the Council's reasons for refusal. The appeal process has given the parties opportunity to comment on it and for all these reasons, there would be no prejudice caused to them in making comments. Thus, it has been considered in this appeal rather than the previous AAP<sup>2</sup>.
5. In appeal A, a revised ground floor plan showing the provision of a bin storage area<sup>3</sup> and an illustrative swept path plan for a manoeuvring fire tender were submitted at the appeal stage. These plans and details do not materially change the nature of the proposed development and they seek to address highway issues raised in the reasons for refusal. The appeal process has given the parties opportunity to comment on these plans and details, and for all these reasons, there would be no prejudice caused to parties in making comments. They have been considered in this appeal.
6. In both appeals, further revised location plans showing enlarged site red-edges have been submitted. The enlarged area covers the area subject to highway works within the AAP. As the enlarged area covers adopted highway land, there is no requirement to consider the revised location plans. Notwithstanding this, the merits of the highway works will be considered in my reasoning.
7. A Preliminary Bat Roost Assessment (PBRA) 2019 report has confirmed that the developments would adversely impact upon bat roosts in the existing dwellings. Main parties have been consulted on whether the Council's recommended condition addressing this issue would meet the relevant tests of national policy.

### **Applications for costs**

8. In each appeal, an application for costs was made by Visao Ltd against Chiltern District Council. These applications are the subject of separate Decisions.

### **Main Issues**

9. In appeal A, the main issues are the effects of the proposal on (a) the highway safety of drivers, pedestrians and cyclists using the proposed access (b) character and appearance of the area, (c) the living conditions of the future occupiers of the proposed dwelling on plot 3, having regard to the provision of private outdoor space, and (d) the occupiers of the neighbouring property at 54 The Warren, having regard to outlook and (e) the provision of adequate bin storage facilities and collection arrangements.

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<sup>1</sup> ITL12517-SK-012A.

<sup>2</sup> ITL12517-SK-010E (previous AAP).

<sup>3</sup> 917:1086/PL101C.

10. In appeal B, the sole main issue is the effect of the proposal on the (a) the highway safety of drivers, pedestrians and cyclists using the proposed access.

## **Reasons**

### *Highway safety (appeals A and B)*

11. Between the neighbouring properties at 272 and 276 Chartridge Lane, there is a straight section of access drive of approximately 67m. It lies between a junction with a service road (to Chartridge Lane) and the main part of the proposed housing site itself. Currently, there is a track with verges, fencing and hedges either side, along this section. In areas closer to the service road junction, the track verges are banked adjacent to hedges.
12. The existing track would be replaced with a new access drive which would have a shared surface designed for vehicle users, pedestrians and cyclists. It would be a minimum width of 4.1m, with some sections measuring 4.3m and 4.8m (at the point the drive joins the service road).
13. The Manual for Streets (MfS) 2007 advocates shared surfaces to encourage low speeds and create an environment in which pedestrians can walk, stop and chat without feeling intimidated by traffic. The MfS states that they are likely to work well in short lengths or where they form a cul-de-sac. Irrespective of whether the access drive would form a short length, it would be part of a cul-de-sac. Under the MfS, the minimum width for two cars to pass is 4.1m, a lorry passing a car is 4.8m and two lorries to pass is 5.5m. It also indicates that the minimum width for pedestrians, including those with buggies, wheelchairs or other forms of walking assistance, would be 2m, albeit for footways. With a narrowest width of 4.1m, the drive would permit two cars to pass or a car and pedestrian under the MfS. With larger than average sized cars, the ability to pass would be more difficult. However, the chances of this occurring must be considered, and a narrower drive width would slow traffic down benefiting the safety of all highway users.
14. Using the Trip Rate Information Computer System (TRICS), the appellant's Technical Note (TN) September 2017 (appeal A) and Transport Appeal Statement (TAS) June 2019 (appeals A and B) indicates travel demands of the development would be one vehicle movement every 15 minutes in the morning peak and one vehicle movement every 20 minutes in the evening peak. Car ownership and car parking space provision would be higher in the appeal site area than the housing development examples used to derive the TRICS vehicle movements data. However, any housing developments underlying the TRICS data will rarely have exactly the same characteristics as that being considered, as sites and developments almost always are different. Movements are also dependent on many other factors, such as residents' working patterns and employment status, and the development only results in a net addition of four dwellings.
15. Furthermore, no substantiated evidence on vehicle movements has been put forward to the contrary and the highway authority responses dated November 2017 (appeal A), and January and March 2019 (appeal B) have not raised any objection to the appellant's analysis of vehicular movements. Moreover, in respect of overall trip rates, it expects each dwelling would generate 4-6 vehicular movements per day. Therefore, the balance of evidence would

- strongly indicate vehicular movements along the access drive, including at peak times, would be small and acceptable.
16. The TN's and TASs' conflict probability assessment indicates that the chances of vehicles meeting one another or pedestrian/cyclist meeting a vehicle on the access drive would be exceptionally infrequent. Even if I was to agree with third party evidence on increased probability of conflict, the scheme would provide a passing area/bay at either end of the drive which drivers could utilise if their vehicles were to meet. Given the straightness of the drive, there would be good inter-visibility between the drivers of oncoming vehicles to enable good use of the spaces.
  17. A waiting vehicle at the service road end of the access drive might have to partly station itself in the service road itself. However, the service road serves a limited number of residential properties where it would be reasonable to assume low traffic speeds. This would significantly reduce highway safety risk. Illustrative swept path plans show that a fire tender could enter and leave the site in a forward gear. The gradient between Chartridge Lane and the drive entrance is not severe and even if there is a chance of a large vehicle grounding, the design of any off-site highway works could take this into account given the extent of adopted land.
  18. The AAP shows the re-positioning of the access drive with the service road and road markings to define it. It also shows a re-positioned main access onto Chartridge Lane and a separate re-configured access for the neighbouring dwelling at 276 Chartridge Lane. These works have passed an independent safety audit and have resulted from discussions with the highway authority who has raised no objection. In respect of the drive junction with the service road, there would be a highway benefit given that it currently has poor visibility to the south.
  19. Although on balance, the highway authority responses dated November 2017 (appeal A) and January and March 2019 (appeal B) considered that the AAP overcame previous concerns and raised no objections to the proposals given the small-scale nature of the development. As a statutory consultee on highway matters, considerable weight is attached to their views.
  20. Other housing schemes with varying access drive widths have been brought to my attention. However, each scheme inevitably differs in terms of number, mix of housing, location and site circumstances and thus relevant comparisons are difficult to make. Moreover, they illustrate that every proposal has to be considered on its individual planning merits.
  21. For all these reasons, there would be no unacceptable impact on the safety of highway users, including persons with physical or mental impairment, and the residential cumulative impacts on the road network would not be severe. In both appeals, the highway authority has raised no objection to the access under the AAP. Accordingly, the proposal would comply with policy TR2 of the Chiltern District Local Plan (LP) 1997 (With Alterations 2001, Consolidated 2007 and 2011) and policy CS26 of the Core Strategy for Chiltern District (CS) 2011, which collectively and amongst other matters, require satisfactory access onto the existing highway network and that standards of road safety for all users should at a minimum be maintained and where appropriate, improved. For all the reasons indicated, the development would create a place that would

be safe, secure and attractive, minimising the scope for highway user conflicts in accordance with National Planning Policy Framework (Framework) policy.

*Character and appearance (appeal A)*

22. The appeal site comprises two semi detached dwellings set in spacious gardens which are sited to the rear of dwellings fronting onto Chartridge Lane. The surrounding area comprises dwellings of varying designs, forms and ages. The scale and plot sizes of the proposed housing would be mostly similar or greater than those contained within the new residential areas built to the rear of Chartridge Lane. In terms of plot size, the exception is plot 3. For this plot, the rear garden would be noticeably smaller than those of the other proposed dwellings. It would also have a small frontage garden. This plot would be particularly prominent because it would be at a bend in an access drive within the housing layout. As a result, the tightness of plot 3 with its dwelling would be noticeable and unsympathetic to local character.
23. The row of car ports, sited along the north boundary of the site, would not be a feature of the surrounding area but they would not be dominant due to their single storey construction, open sided nature and low pitched, hipped roofs. The garages would also be located away from public vantage points. Therefore, the car ports would not be visually intrusive in the area.
24. The Framework states that high quality buildings and places are fundamental to what planning should achieve, irrespective of whether they are located in areas of 'Special Character' or Conservation Areas. For all the reasons indicated, the unsympathetic layout of the plot 3 dwelling would harm the character and appearance of the area. Consequently, the proposal would conflict with policies GC1 and H3 of the LP, which collectively, and amongst other matters, requires development to be designed to a high standard, having regard to scale, siting and relationship with other development, and to be compatible with the character of those areas by respecting general density, scale, siting and character of buildings in the locality.

*Living conditions of the future residents of the plot 3 dwelling (appeal A)*

25. The 2 bedroom dwelling on plot 3 would attract lower person occupancy than the other proposed dwellings. It's kitchen and living/dining rooms would face onto a rear garden. A plan shows space for an external seating area as well as garden space.
26. LP policy H12 states each house should have a private garden area adequate for and appropriate to the size, design and amount of living accommodation and the general standard expected will be a minimum garden depth of 15m. The plot 3 garden depth would be considerably less than 15m and would be enclosed by the retained dwelling, a two storey extension and boundary walling. It would have a northerly aspect. As such, daylight and sunlight would be severely restricted to this enclosed space and its usefulness for every day activity, such as external dining area, seating, drying area, playspace, etc would be limited.
27. Small gardens can be permitted under the policy in certain circumstances. However, the rear site boundary would not abut open field, open countryside, recreation ground or a playing field. Although the whole development would be within attractive landscaped setting, the plot layout and orientation of the

dwelling, the size and enclosed nature of its garden would not provide a good standard of amenity for future occupiers. For all these reasons, the development would harm the living conditions of the future occupiers of the dwelling on plot 3, having regard to private open space provision and the proposal would conflict with policies GC3 and H12 of the LP.

*Living conditions of the residents at 54 The Warren (appeal A)*

28. The plot 6 dwelling would be separated by approximately 4m from the side of the neighbouring bungalow at No 54. The proposed dwelling would have a roof eaves at a similar height to that of the bungalow. The new dwelling would flank the neighbouring dwelling and it would project some 5m beyond the rear of its neighbour.
29. The neighbour's loss of outlook to their garden would not be significant. To the rear, the new dwelling would be stepped in from the boundary and partially flat-roofed, with an eaves height not significantly greater than any permitted boundary fencing, limiting visibility. However, the dwelling would have a high and steep pitched roof alongside the neighbour's kitchen window at the end of the bungalow. This kitchen has another window and door serving it, and no dining area as part of it. However, it is a reasonable sized living area and the affected window is the principal opening serving it. Consequently, the bulk of the dwelling would significantly affect the neighbour's outlook from the kitchen.
30. The new dwelling's siting would not contravene a 45 degree line of sight assessment taken from the corner of the bungalow but this is not taken from the principal kitchen window. There is no evidence that there would be a greater than theoretical possibility that permitted development rights for the new dwelling would be exercised in respect of the new dwelling. As a result, limited weight is attached to this. Substantial vegetation is located on the common boundary between the two properties, but this is considerably less extensive where the new dwelling would face the principal kitchen window. In any case, there can be no guarantee that vegetation would remain in perpetuity.
31. Whilst there have been no objections from the neighbours, planning is concerned with the living conditions of future residents not just existing residents. In two recent appeal decisions, Inspectors have found the relationship of new buildings to existing bungalows acceptable in terms of outlook. However, these decisions merely illustrate that every proposal has a different context requiring it to be considered on its particular planning merits.
32. For all these reasons, these considerations would not outweigh the identified harm to the living conditions of the occupiers of the bungalow, having regard to outlook. Accordingly, the proposal would conflict with policies GC3 and H3 of the LP, which collectively and amongst other matters, require the protection of amenities enjoyed by the occupants of existing neighbouring properties.

*Bin storage facilities and collection (appeal A)*

33. Each dwelling would have space for bin storage and a communal bin store would be located adjacent to a car port. The illustrative swept path plans show that a refuse truck would be able to enter and leave the site in a forward gear even with a waiting car at the housing end of the access drive. The truck would pass over a small landscaped area but an appropriately worded condition



- could be imposed to require a minor amendment to the scheme's layout to rectify this. On this basis, there would be no requirement for housing occupiers to put out their bins at the bottom of the access drive where it meets the service road.
34. The distance between the communal bin store and some of the dwellings would be significantly greater than 30m. Whilst not ideal, residents would have little choice because otherwise their waste would not be collected. Currently, the refuse vehicles access the service road south of the access drive and they would not be able to turn into the drive from this direction because the turn would be too acute. Therefore, after collecting waste/recyclables from the service road properties, it would be likely that any refuse truck would need to exit onto Chartridge Lane and then come back to enter the access drive via the new Chartridge Lane/service road junction. However, this would not stop bin collection taking place and based on previous comments on the acceptability of the AAP, it would not be unacceptable on grounds of highway safety.
35. During the determination of the planning application, the Council's officer (Oct 2017) on waste matters recommended refusal but this was made prior to the submission of the AAP, illustrative swept path plans for a refuse vehicle and revised ground floor plan showing the provision of bin storage area. In a response dated November 2017, the highway authority also raised no objections in respect of refuse matters. For all these reasons indicated, the proposed development would provide suitable means of bin storage and collection which would comply with national policy in paragraph 110 of the Framework.

*Other matters (Appeal B)*

36. The PBRA report confirms bat roosting of two species in the existing dwellings which was also identified in a 2016 PBRA report. The redevelopment would require the granting of a European Protected Species licence. The earlier report detailed the design of bat loft and built-in bat boxes (at least 1), the timing of dwelling demolition and new construction work, and the need for ecologist supervision. The provision of housing would be an imperative reason of overriding public interest within the context of a licence application. There have been reasonable efforts to explore an alternative to the proposal and the mitigation would be expected to maintain the local population levels of the species. Having considered Natural England's 'Standing Advice', there is a reasonable prospect of a licence being granted through the meeting of the three tests.
37. The dwelling on plot 1 would be located a considerable distance from the neighbouring property at 272 Chartridge Lane, at the end of a long and large garden, and would have no directly facing first floor windows. The dwelling on plot 6 would be mostly single storey with first floor windows being rooflights which would be stepped back from the common boundary with 54 The Warren. All other dwellings would be sited considerable distances from the site boundaries. The net increase in traffic along the access drive throughout the day would not be significant. For all these reasons, there would be no harm to the living conditions of residents through the significant loss of outlook, privacy or adverse noise and disturbance.
38. Parking provision would accord with local authority standards and would be appropriate in this suburban location. Additional vehicle generation would not

be significant even at peak times and as such, there is no evidence that levels of air pollution would be materially affected. Residents of the development would use local services, such as health facilities, but there is no evidence from providers that this proposed development would significantly hinder service provision for local people. An injunction has been served on the appellant as a result of a property dispute with a third party but this would not be a reason to withhold planning permission as this is a separate legal matter.

39. The emerging Chiltern and South Bucks District Local Plan 2036 is at early stages of plan preparation and therefore, little weight is given to its policies.

*Planning balance*

40. In appeal A, the character and appearance of the area, and the living conditions of the future occupiers of a proposed dwelling and the occupiers of a neighbouring dwelling, would be harmed. There would be conflict with character and appearance, and living condition policies of the LP and CS. There is no 5 year Housing Land Supply (5YHLS), the Council indicate 2.48 years supply, but the weight to be attached to these policy conflicts remains significant. The policies are broadly consistent with design policies of the Framework which require well-designed places sympathetic to local character and with a high standard of amenity for existing and future occupiers. Therefore, the proposal would be contrary to the development plan as a whole.
41. As indicated, there is no 5YHLS and supply has fallen short of its requirement over the last 3 years. Housing supply would be boosted, and a good mix of units would be provided. This small sized site would make an important contribution to meeting housing requirements and it could be built-out quickly. Urban infilling would reduce the need to develop housing in the countryside and would help to promote a good mix of sites by developing a windfall site. Five of the dwellings would have south facing rear elevations so reducing energy requirements and greenhouse emissions. The proposal would make a more efficient use of land by increasing dwelling numbers on it. An opportunity for improving the way the area functions would be taken because the visibility of the access drive with the service road would be improved.
42. However, the poor design of the development would harm in a significant and permanent way the character and appearance of the area and the living conditions of residents for all the reasons indicated. Good design is a key aspect of sustainable development under the Framework. As a result, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development would not apply. There are no material considerations of sufficient weight or importance that determine that the decision should be taken otherwise than in accordance with the development plan and planning permission should be refused.
43. In Appeal B, the proposal accords with the development plan and there are no material considerations of sufficient weight or importance that determine that the proposal should be taken otherwise than in accordance with the development plan and granted planning permission.



*Conditions (appeal B)*

44. Suggested conditions have been considered in light of the advice contained in Planning Practice Guidance and partys' comments. Some have been amended and amalgamated in the interests of clarity and precision taking into account the guidance.
45. To provide certainty, a condition is necessary specifying the approved drawings. In the interests of character and appearance of the area, conditions are necessary setting out the requirements for external materials, site levels, boundary treatments, and communal bin store design and finish. Conditions are necessary requiring that the access drive, including its junction and visibility splay, are fully implemented and maintained in accordance with the AAP. These works have been accepted by the highway authority and have passed a safety audit. Such works can be performed within the time limit imposed by the permission. A condition is necessary to ensure the implementation of the bat mitigation contained within the PBRA reports in the interests of protected species.
46. In the interests of neighbour privacy, a condition is necessary withdrawing permitted development rights for first floor and above fenestration for dwellings on plots 1 and 6. For the sake of biodiversity and protected species, the implementation of a scheme of biodiversity enhancements and a lighting strategy are necessary in accordance with development plan policies. There are no exceptional circumstances justifying the withdrawal of permitted development rights for extensions and alterations to the dwellings or buildings within their curtilages because of the dwelling plot sizes, designs and sittings (relative to neighbouring properties).

**Conclusion**

47. For the reasons given above and having regard to all other matters raised, I conclude that Appeal A should be dismissed, and Appeal B should be allowed.

*Jonathon Parsons*

INSPECTOR

### **APPEAL B Schedule of attached conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 108 (Location plan red outline): 917:1102/PL 100B; 917:1102/PL 101B; 917:1102/PL 102B; 917:1102/PL 103C; 917:1102 PL/104A; 917:1102 PL/105A: 917:1102 PL/106: 917: 1102/PL 107B: 917:1102/PL 108 and ITL12517-SK-012A.
- 3) Before any construction work commences on the site, details of the materials to be used for the external construction of the development hereby permitted, including the facing materials, roofing materials and surface materials for the paths and parking areas, shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved materials.
- 4) Prior to the commencement of any construction works on site, detailed plans, including cross sections as appropriate, showing the existing ground levels and the proposed slab and finished floor levels of the residential units hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed datum point normally located outside the application site. Thereafter the development shall not be constructed other than as approved in relation to the fixed datum point.
- 5) Prior to the occupation of the development hereby permitted, the access onto Chartridge Lane shall be fully laid out in accordance with the approved plans and visibility splays shall be provided in accordance with approved drawing no. ITL12517-SK-012A. The area contained within the splays shall be kept free of any obstruction exceeding 0.6 metres in height above the nearside channel level of the carriageway.
- 6) The scheme for the parking and manoeuvring indicated on the submitted plans shall be laid out prior to the initial occupation of the development hereby permitted and those areas shall not thereafter be used for any other purpose.
- 7) Prior to the occupation of the development hereby permitted, full details of the proposed boundary treatments for the site shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall then be erected/constructed prior to the occupation of the residential units hereby permitted.
- 8) Prior to the occupation of the development hereby permitted, full details of the proposed bin stores shall be submitted to and approved in writing by the Local Planning Authority. The bin stores shall be erected and completed in accordance with the approved details prior to the occupation of the residential units hereby permitted.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order, with or without modification), no roof lights, windows/dormer windows other than those expressly authorised by this permission, shall be inserted or constructed at any time in the

first floor (or above) flank elevations of the dwellings on plots 1 and 6 hereby permitted.

- 10) The development shall be carried out in accordance with the bat mitigation measures within the Preliminary Bat Roost Assessment report produced by Ecology By Design (report reference: EBD00167, dated 10 October 2016) and RSK letter dated 25 October 2019 (letter reference: 858247 – 274 Chartridge Lane bat mitigation letter Rev02). These relate to the provision of roosting spaces within the new dwellings on plots 2 and 3 in the form of a 'bat loft' and 'built-in bat boxes', the need for ecologist supervision and timing requirements for the demolition of existing dwellings and the construction of the replacement dwellings.
- 11) No development above slab level shall commence until a detailed scheme of ecological enhancements have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of native landscape planting, including species of known benefit to wildlife, and the provision of artificial roost features, including bird and bat boxes. The approved enhancements shall then be planted/erected/constructed prior to the occupation of the residential units hereby permitted.
- 12) Prior to the occupation of the development hereby permitted, a "lighting design strategy for biodiversity" for buildings, features or areas to be lit shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall
  - a) Identify those areas/features on the site that are particularly sensitive for wildlife and that are likely to cause disturbance in or around breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
  - b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent wildlife using their territory or having access to their breeding sites and nesting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and maintained in accordance with the strategy. Under no circumstances should any other external lighting be installed.



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## Costs Decisions

Site visit made on 24 September 2019

**by Jonathon Parsons MSc BSc DipTP (Cert Urb) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20<sup>th</sup> December 2019**

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### **Costs application in relation to Appeal A Ref: APP/X0415/W/17/3191276 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Visao Ltd for a partial award of costs against Chiltern District Council.
- The appeal was against the refusal of planning permission for the retention of Nos 274 and 274A, two storey extension to each, and one two bedroom detached house, one three bedroom detached house, and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access.

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### **Costs application in relation to Appeal B Ref: APP/X0415/W/19/3231699 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Visao Ltd for a full award of costs against Chiltern District Council.
- The appeal was against the refusal of planning permission for the demolition of Nos 274 and 274A, the erection of two three bedroom semi detached and one two bedroom detached house, one three bedroom detached house and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access.

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## Decisions

1. The application for award of costs is refused in Appeal A and allowed in Appeal B in the terms set out below.

## Reasons

### *Appeal A*

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The High Court quashed the previous Inspector's decision but not the associated cost decision. The cost decision remains extant and therefore the costs application has to be determined solely in respect of the re-determined appeal.
3. In the re-determination appeal, the Council has continued to base its objections on an access arrangement plan, including latest AAP<sup>1</sup>. The High Court quashed the previous Inspector's decision because he failed to properly

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<sup>1</sup> ITL12517-SK-012A.

- consider the applicant's request to consider this later AAP and by failing to take account of this, not providing an assessment why the latest access arrangements were acceptable taking into account highway authority views on it. It was also found a departure from the highway authority views required cogent and compelling reasons. However, the previous Inspector considered cost submissions on the basis of reasons for refusal 1 (highways) and 5 (bin storage and collection), and therefore, if I were to consider this further, I would be straying into matters previously addressed in an earlier extant decision.
4. In terms of the re-determination appeal, attention has been drawn to a purported similar proposal at Long Park at Chesham Bois but as with other schemes, the Council has drawn attention to differences with the present proposal. Importantly, it has indicated that every proposal has to be considered on its individual planning merits.
  5. Notwithstanding the quashing of the previous appeal decision, the Inspector's comments on the non-successfully challenged part of the decision remain material. The applicant has argued that the Council has been unreasonable in not re-assessing its case based on these. As with the previous Inspector, I have found no adverse impact arising from the carports on the character and appearance of the area or the dwelling on plot 6 on a neighbouring residents' use of their garden. However, the proposal still fails on the more substantive aspects of these two issues which has resulted in the dismissing of the appeal taking into account housing considerations.
  6. On this basis, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in appeal A, for all the reasons given above.

#### *Appeal B*

7. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
8. The refusal of the planning application followed the quashing of the decision on the other appeal proposal on this site by the High Court which has been re-determined in appeal A. In this appeal B, the Council's decision was based on the access arrangement plan (AAP)<sup>1</sup>, and a ground floor plan (showing bin storage within the housing part of site). Members refused the proposal solely on highway grounds against an officer recommendation of permission.
9. It is entirely within the remit of Members to come to a different view from that of its professional officers. In these circumstances, the Guidance states that an authority is expected to produce relevant evidence on appeal to support its decision. Although I have come to a different view on the merits of the proposal, it does not follow that unreasonable behaviour occurs.
10. The Council's planning committee was aware that the highway authority and its own officer advising on waste disposal matters had raised no objections to the proposal. The Council should also have been aware of the High Court judgement on appeal proposal A where the judge stated that the views of the highway authority on the proposed access arrangements were highly material, departure from that view would require cogent and compelling views.

11. The Council has expressed considerable concerns about the access arrangements, but this has not been detailed in its evidence. Reference to the site circumstances and planning history does not equate to evidence on highway safety. Furthermore, the Council has not commented on the features of AAP including the provision of passing spaces either side of the access drive. No assessment of the applicant's Transport Note January 2018 and Transport Appeal Statement June 2019, including its traffic movement and conflict probability evidence, has been made. The lack of substantiated evidence to support its objections and any objective analysis of the applicant's evidence results in vague, generalised and inaccurate assertions about the proposal's impact.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. A full of costs is justified in the preparation of this appeal and cost submission where work is additional to that carried out in respect of appeal A.

### **Costs Order (Appeal B)**

13. 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 Chiltern District Council shall pay to Visao Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Chiltern District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

### **Conclusion**

14. For the reasons given above, I conclude that application for an award of costs is refused for appeal A but allowed for appeal B on the terms set out above.

*Jonathon Parsons*

INSPECTOR