



The Planning Inspectorate

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117 - 987 8927
Switchboard 0117 - 987 8000
Fax No 0117 - 987 8139
GTN 1374 - 8927
E-mail ENQUIRIES.PINS@GTNET.GOV.UK

Mr M McGregor
MMC Consultancy Services
Quay 430
59 China Court
Asher Way
Wapping
LONDON E1 9JF

Your Ref:

Our Ref:
T/APP/V2255/A/97/286193/P7

Date: 13 JUL 1998

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MR A HEARN
APPLICATION NO: SW/97/590**

1. The Secretary of State for the Environment, Transport and the Regions has appointed me to determine your client's appeal against the decision of the Swale Borough Council to refuse planning permission for the erection of a forestry building on land at Yaugher Wood, Warren Lane, Hartlip, Sittingbourne. I held a local inquiry on 30 June and 1 July 1998. At the inquiry, an application was made on behalf of Mr A Hearn for an award of costs against Swale Borough Council. This is the subject of a separate letter.

The Site

2. I saw on my site visit that Yaugher Wood is located in the countryside and comprises dense, mainly chestnut, woodland which has been coppiced in the past but has not been managed for many years apart from some clearance work and improvement to the access. An unsurfaced track leads a short distance from Warren Lane to an area cleared of trees by the appellant and which is partly occupied by unsightly temporary buildings and structures including two steel containers. An adjoining cleared area provides a large turning space used for storing materials and as a space where several vehicles and a caravan were parked at the time of my visit. Rough tracks, one of which is a public footpath, lead through the wood which extends to about 21 hectares part of which is located to the north of the M2 motorway and is reached by means of an underpass.

3. Yaugher Wood is the subject of a woodland Tree Preservation Order (TPO) made in August 1996 and is designated as a Site of Nature Conservation Interest (SNCI) as well as being within the Kent Downs Area of Outstanding Natural Beauty (AONB) and Special Landscape Area (SLA). The Wood is included in the Inventory of Kent's Ancient Woodlands (Documents 8 and 14) although there is some doubt as to the accuracy of the inventory and the extent of Yaugher Wood which can be properly described as being ancient particularly in the vicinity of the proposed building.

The Development Plan and draft Local Plan

4. In determining this appeal I have had regard to the development plan which comprises the adopted Kent Structure Plan (1996) and I have been particularly referred to Policies RS1,



RS5, ENV1, ENV2, ENV3, ENV4 and ENV6 as being relevant to this proposal. I have also been referred to various policies of the draft Swale Borough Local Plan. Although this plan is not yet part of the development plan it has reached an advanced stage of preparation and I have given it due weight in accordance with the advice of paragraph 48 of Planning Policy Guidance Note No 1 (PPG1 *General Policy and Principles*).

5. Policies RS1, RS5 and ENV1 seek to protect the countryside for its own sake and restrict development there unless it is for various purposes including those demonstrated to be necessary to agriculture or forestry. The policies also require any development in the countryside to respect its character by being well designed and appropriate in location, scale and appearance to its surroundings. Policies ENV2, ENV3, ENV4 and ENV6 seek to protect the AONB, SLA and SNCI from development which would be harmful to natural beauty, landscape and wildlife interests. The provisions of the above policies are reflected in the relevant policies of the draft Local Plan.

The Main Issues

6. Having regard to the above policies and from the representations made at the inquiry and in writing, together with my inspection of the site and its surroundings, I consider that there are two main issues in this case. The first issue is whether the proposed building is necessary to agriculture or forestry and the second issue is its effect on the character and appearance of the surrounding countryside.

The Need for the Proposed Building

7. On the first issue, I understand that at the time your client bought Yaughar Wood in 1995 the woodland was overgrown and poorly managed although it produced some income from coppicing and sporting shoots. Mr Hearn improved the access to the site and cleared rubbish and some burnt-out cars which had been left in the wood, but the importance of obtaining a satisfactory income from the wood became more pressing in early 1996 when Mr Hearn lost his previous employment as manager of a naturist club in Sevenoaks. At that time, Yaughar Wood also began to be used without planning permission for the purposes of recreation as a naturist facility. The Council served Enforcement Notices requiring the cessation of that use and the removal of mobile buildings, structures etc and appeals against the Notices were dismissed on 8 April 1997 (T/APP/C/96/V2255/643179-80).

8. The failure of Mr Hearn's plans to operate a naturist facility from Yaughar Wood concentrated his attention on its potential for coppicing and game bird activities. Also, following the coppicing of some 3ha of the woodland by sub-contractors in early 1996, Mr Hearn realised that such work would be more profitable if he undertook it himself, initially with the help of a volunteer workforce of friends who are concerned to protect the environment. Mr Hearn began to prepare a woodland management plan in early 1996 with the help of a friend and advice from the Forestry Authority and others. This plan has only recently been finalised and an application submitted to the Forestry Authority for a Woodland Grant Scheme (WGS). The Authority has indicated that the proposals appear to be generally acceptable.

9. The WGS application proposes rotational coppicing with a limited area being selected for conversion to high forest as well as introducing a system of new rides. In the interests of efficient and safe working, it is intended to convert the coppiced timber to fence posts at a central point at or near the building proposed in this appeal. The building would be used for the storage of equipment used during coppicing, workspace for the production of the fence posts, and in connection with rearing and feeding of game birds. The building would also house toilet and washing facilities for workers.

10. The Council supports the appellant's intentions to manage the woodland, but doubts that it could be properly or safely coppiced by Mr Hearn and a volunteer workforce. Whilst I share some of the Council's concern on this aspect, the evidence indicates that Mr Hearn has some relevant practical experience and he demonstrated his knowledge of the subject at the inquiry. Furthermore, Mr Hearn is being advised on forestry and related matters by a qualified and experienced forestry consultant, and by Mr Gill who gave evidence at the inquiry which also demonstrated his knowledge of the forestry and nature conservation interests at Yaughar Wood. I do not therefore regard the inexperience or otherwise of those who would undertake the management of the woodland to be a material planning consideration which carries any significant weight in this case. Similarly, although I understand that the management activities might be partly carried out by naturists, I do not consider this to have any significant bearing on the planning considerations which are material to my determination of this appeal.

11. On the advice of the Forestry Authority and their own forestry consultant, the Council also considers that although the proposed building might be desirable, it is not necessary to the management of the relatively small area of woodland owned by the appellant. They refer to the traditional method of coppicing woodland timber which normally involves a small sub-contracted workforce carrying out limited preparation of timber where it is cut prior to transportation elsewhere away from the woodland for any further preparation required to finish the end product. This method does not need any buildings where the timber is cut since no permanent storage for tools or equipment is required and any temporary need for cover is provided by tarpaulins or temporary containers.

12. It seems to me that the traditional method of coppicing by sub-contractors is of limited relevance to this case where the woodland owner clearly wishes to carry out the work by himself. Furthermore, whilst woodland management and coppicing has traditionally been undertaken on the site and elsewhere without any provision of facilities for forestry workers and equipment, this appears to have been out of necessity rather than by choice. There appears to be no compelling reason why such facilities should not be provided in appropriate circumstances so long as they are necessary to forestry and do not result in any harm to interests of acknowledged importance. In the circumstances of this case, where I understand that the appellant does not own any suitable premises elsewhere for the storage of equipment or finishing timber, I can understand the advantages in carrying out as much work as possible on the site in terms of economy, efficiency and sustainability by minimising off-site movements.

13. Mr Hearn also wishes to increase his income from the woodland by expanding the shooting and associated rearing of game birds and has erected a number of pens near the site of the proposed building where pheasants are reared prior to being taken to release pens sited in various locations in the wood and elsewhere in the locality. It is intended to store feed for the birds in the proposed building as well as using it to house eggs and chicks in incubator units. In December 1997 the Council granted a Lawful Development Certificate relating to the breeding, shooting and rearing of game birds at Yaughar Wood, but at the inquiry the Council questioned whether the rearing of game birds for sport falls within the definition of agriculture and does not consider that the storage of game bird keeping equipment on a site as small as Yaughar Wood justifies the erection of a building.

14. The Council referred me to case law on this matter, but that seemed to me to be inconclusive (Document 12) and, in any case, whether or not the keeping and rearing of game birds is within the definition of agriculture, the Lawful Development Certificate enables Mr Hearn to undertake this activity in Yaughar Wood. Whilst I understand that the need to store feed and equipment on the site associated with this activity is more usually accommodated off-site, in this case it is impracticable, and since the appellant's activities in

breeding and keeping of game birds is part of his overall plan to manage the woodland, I consider this need to be ancillary to the use of the land for forestry.

15. The need for the proposed building arises in this case from the appellant's intentions, which have been demonstrated in this appeal as being to manage the woodland as a whole. Such intentions are supported in various relevant documents including Planning Policy Guidance Note No 7 (PPG 7 *The Countryside-Environmental Quality and Economic and Social Development*) which in paragraph 1.8 refers to the contribution that well planned and managed woodland can make to improving the appearance of the countryside, creating new jobs and enriching wildlife habitats. Paragraph 23 of Annex C to PPG7, also states that to help ensure the long-term sustainability of small woodlands, the Government wishes to maintain and develop markets for woodland produce and to encourage woodland-based enterprise that adds to rural diversification. Although building in the countryside should be strictly controlled, with greater policy of restraint in areas designated for their landscape and wildlife qualities, one of the key objectives of PPG7 is to promote sustainable development which ensures rural prosperity and enterprise.

16. However I do accept that the need for the proposed building at Yaughar Wood is finely balanced having regard to the traditional method of coppicing which for many years has been carried out without any such need. Furthermore, the evidence suggests that the scale of forestry activities at Yaughar Wood might not occupy the appellant during the whole year. However, in this case, I am satisfied that the evidence has demonstrated the appellant's commitment to managing the woodland in a way which is supported by national planning policy and which will, if carried out, improve both its appearance as woodland and its interest as a wildlife habitat. The circumstances are such that the management of the woodland would be more effectively and efficiently carried out if the appellant is able to store equipment in a secure building on site as well as using it as a working base.

17. For the above reasons, I am led to conclude on the first issue that in the circumstances of this case, it has been demonstrated that there is a reasonable need for the proposed building for the purposes of forestry. The proposal is therefore in accordance with Policy RS5 of the Structure Plan.

The Effect of the Proposed Building on the Character and Appearance of the Countryside

18. Although the 1:2500 scale plan submitted with the planning application shows the proposed siting of the forestry building there was some dispute at my site visit between the appellant's representative and the Council's planning officer as to the precise location of the proposed building. I saw on my site visit that the existing temporary building is located roughly on the site of the proposed building although this was difficult to ascertain because the boundaries of the site were obscured by woodland. It was however agreed by the parties that I should determine the appeal on the basis of the submitted site plan.

19. In addition you asked me at the inquiry, to consider a revised design for the proposed building (Appeal Plan C) as a substitute for the drawing submitted with the planning application. The Council had no objection to this and since the appearance of the proposed building was not a contentious issue in the objections from third parties, and it is slightly smaller than the building originally proposed, I do not consider that their interests would be prejudiced if I agreed to your request. I therefore confirm that I have considered the appeal on the basis of the revised design.

20. The revised design proposes a 6m x 18m pitched roof timber boarded building which would accommodate a working area, poultry feed store, toilet and washing facilities, a secure

store and an office. Notwithstanding the difficulty of visualising the precise siting of the proposed building, it was clear to me at my visit to the site that it would be located just off the existing access track and close to the areas referred to above which have already been cleared of trees. Having regard to the location of the proposed building, I do not consider that it would have any significant impact on the natural beauty or landscape of the AONB or SLA and the proposal is therefore in accordance with Policies ENV3 and ENV4 of the Structure Plan and the relevant policies of the draft Local Plan (E15 and E16). The design of the proposed building would be in keeping with the rural character and appearance of the area and although relatively large, its size is reasonable for its purpose, and would not be out of scale with its setting in an extensive area of woodland. The proposal also therefore satisfies the requirements of Policies RS1 and ENV1 of the Structure Plan.

21. There is no evidence to show that the erection of the proposed building would harm the scientific or wildlife interests of the SNCI and I note that the appellant's management plan includes measures to conserve and enhance the flora and fauna of the woodland. The site of the proposed building has already been cleared of trees and I am not aware of any adverse effect that would arise to the existing protected, or ancient, woodland trees. The proposal does not therefore conflict with the provisions of Policies ENV2 and ENV6 of the Structure Plan and the relevant policies of the draft Local Plan (E21, E22 and E31).

22. For the above reasons, I am led to conclude on the second issue that the proposed building would not have an adverse effect on the character and appearance of the countryside surrounding the site.

Conditions

23. Since the proposal is in accordance with the relevant provisions of the development plan, the appeal should be allowed unless material considerations indicate otherwise. I have therefore considered the conditions suggested without prejudice by the Council in the event that I am minded to allow the appeal. The first condition would restrict the use of the building to the storage of ancillary feed-stuffs, equipment and vehicles directly associated with the management of Yaugher Wood for forestry and pheasant keeping. I regard such a condition to be necessary and reasonable in this case since any other use of the building would be contrary to the relevant provisions of the development plan. However, I consider that the condition should be re-worded to clarify that the main use of the building is for the purposes of forestry, including a workspace, and to other ancillary purposes associated with forestry and the keeping of game birds as shown on the revised drawing JH100 and made clear from the evidence produced for the appeal.

24. In view of the lack of reference to external materials on the revised design drawing, a condition requiring the submission and approval of further details is necessary. Furthermore, although this appeal has been determined on the basis of the siting shown on the submitted 1:2500 scale plan, I consider that it is necessary for a more detailed plan to be submitted and approved to clarify this siting, particularly in relation to the existing building on the site and the access track.

25. There is no evidence of any agricultural or forestry need for any buildings other than the proposed building, and the requirements of the Enforcement Notices in respect of the removal of the buildings have yet to be met. Although I understand that recent legal proceedings by the Council against the appellant pursuant to the Notices were unsuccessful, you have indicated his agreement to the removal of the main building if this appeal were to be allowed. In view of the lack of demonstrable need for two forestry buildings, I consider that the existing main building should be removed prior to the erection of the proposed building. A condition requiring the removal of the existing building would therefore be

relevant to the proposed development, but on the face of it is unnecessary since it would appear from the submitted site plan that it would have to be removed to erect the proposed building. However, in view of my above comments concerning siting, I consider a condition requiring the removal of the existing main building to be necessary in this case.

Other Matters

26. In considering this appeal, I have also had in mind the fall-back position of the possible erection of a building on the site as permitted development under Class A of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). I understand that the Council considered an application from the appellant for prior approval for a forestry building on the site, but since they decided that the building was not reasonably necessary for the purpose of forestry it could not be considered as permitted development and required planning permission which they subsequently refused, leading to this appeal. The Council's decision on that application is not before me at this appeal, but it seems to me that the appellant's current intention to carry out coppicing and general management activities at Yaugher Wood are uses for the purposes of forestry which would enable him to carry out the permitted development set out in Class A of Part 7 of Schedule 2 of the GPDO although this would depend on the reasonable necessity of the development.

27. I am also aware that in dismissing your client's appeal against the Enforcement Notices, the Inspector concluded that the use of Yaugher Wood as a recreational facility has caused, and if permitted would cause further, harm to interests of acknowledged importance. I agree with that conclusion to the extent that probably rather more of the woodland has been cleared than would otherwise have been necessary just for forestry purposes, but there is no evidence before me at this appeal to indicate that any further harm would result from the forestry building now proposed. On the contrary, it would seem that the appellant's current proposals would be more likely to have a beneficial impact on the environment of the woodland than if it were to be used for recreation.

28. I have considered the concern which has been expressed about the possibility that the proposed building would not be used by the appellant for the purposes of forestry if the appeal were to be allowed. I can understand this concern having regard to the previous planning history of the site, but I have no reason to believe that it is well-founded in view of the evidence put to me at this appeal.

29. I have taken into account all the other matters raised, including the objections from the Hartlip Parish Council and the Council for the Protection of Rural England, but have found none that would outweigh the main considerations that have led me to my decision to allow the appeal in accordance with the provisions of the development plan.

Decision

30. For the above reasons and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the erection of a forestry building at Yaugher Wood, Warren Lane, Hartlip, Sittingbourne in accordance with the terms of the application (No SW/97/590) dated 1 June 1997 and the plans submitted therewith (as amended by drawing number JH100), subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;

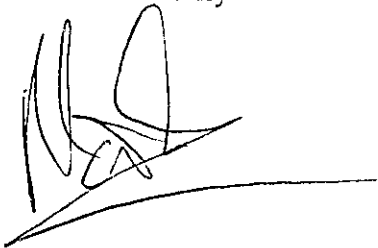
2. the building hereby permitted shall only be used as a store and working space for purposes directly associated with, and necessary to, the management of Yaughar Wood for forestry and purposes ancillary thereto, including the breeding and keeping of game birds, and shall not be used for any other purpose whatsoever;
3. no development shall take place until the following have been submitted to and approved in writing by the local planning authority:
 - a) details of the materials to be used in the construction of the external surfaces of the building hereby permitted,
 - b) a plan showing the precise siting of the building hereby permitted in relation to the existing main building on the site and other physical features which can be readily identified,and development shall be carried out in accordance with the approved details;
4. the development hereby permitted shall not be commenced until the existing main building on the site has been removed from Yaughar Wood.

31. These conditions require further matters to be agreed by the local planning authority. There is a right of appeal to the Secretary of State if they refuse any such application, fail to give a decision within the prescribed period, or grant a conditional approval.

32. The developer's attention is drawn to the enclosed note relating to the requirements of the Building Regulations 1991 with respect to access for disabled people.

33. This letter only grants planning permission under Section 57 of the Town and Country Planning Act 1990. It does not give any other approval or consent that may be required.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Clark', written over a horizontal line.

MICHAEL CLARK FRTPI FRICS
Inspector

APPEARANCES

FOR THE APPELLANT

Mr M McGregor

MMC Consultancy Services.

He called himself and:

Mr J Hancock DipTP MRTPI

Planning & Development Consultant.

Mr J M Gill MICES CMS

Land Surveyor and friend of the
appellant.

Mr A Hearn

Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr D Milne TD LLB

Chief Solicitor, Swale Borough
Council.

He called:

Mr P S Taylor DipTP MRTPI

Area Planning Officer, Swale Borough
Council.

Mr R G Taylor NDF FARborA

Consultant in Arboriculture &
Forestry.

DOCUMENTS

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| Document 1 | List of persons present at the inquiry. |
| Document 2 | Council's letter of notification of the inquiry and list of persons notified. |
| Document 3 | Letters received in response to Document 2. |
| Document 4 | Letter and enclosures dated 24 June 1998 from Mr Liversidge (Forestry Commission) to Mr P Taylor (Swale BC). |
| Document 5 | Bundle A submitted by Mr McGregor (his Proof of Evidence, Appendices 1-7 and Photographs). |
| Document 6 | Bundle B submitted by Mr McGregor (Appendices A-H, list of documents, lists of equipment). |

- Document 7 Written Statement by Mr S Judd MA, Forestry Consultant.
- Document 8 Extract from *Kent Inventory of Ancient and Semi-Natural Woodlands (Draft 1994) (Appendix E)*.
- Document 9 Extract from *Journal of Planning Law Notes of Cases*
- Document 10 Appendices A-D of Mr P Taylor's evidence and air photo of site.
- Document 11 Appeal decision T/APP/P3420/C/85/846, 847 & 848/P6 dated 10 December 1985.
- Document 12 Extract from a legal handbook concerning the classification of the rearing of game birds as an agricultural use.
- Document 13 Extracts from *The Shooting Times*, *The Shooting Gazette* and *The Roughshooters Handbook*.
- Document 14 Extract from *A Provisional Inventory of Kent's Ancient Woodlands Revised 1994*.

PLANS

- Plan A Application plans: 1:2500 site plan, elevations (NTS) and specification.
- Plan B Appeal plans: 1:2500 site plan, 1:2500 management plan, 1:2500 plan of Yaugher Wood.
- Plan C Appeal plan: 1:100 scale plan and elevations of proposed building (revised design drawing number JH100).



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GTN 1374 - 8927
E-mail ENQUIRIES.PINS@GTNET.GOV.UK

Mr M McGregor
MMC Consultancy Services
Quay 430
59 China Court
Asher Way
Wapping
LONDON E1 9JF

Your Ref:
-
Our Ref:
T/APP/V2255/A/97/286193/P7

Date: 30 JUL 1998

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 320 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY MR A HEARN
APPLICATION FOR COSTS BY MR A HEARN**

1. I refer to your application for an award of costs against the Swale Borough Council made at the inquiry held on 30 June and 1 July 1998. The inquiry was in connection with an appeal relating to an application for the erection of a forestry building on land at Yaugher Wood, Warren Lane, Hartlip, Sittingbourne. A copy of my decision letter is enclosed.
2. In support of your application, you submitted that the Council had taken unreasonable steps to justify their position which indicated a lack of knowledge of rural matters. You said that they had to rely on advice from the Forestry Authority and had failed to give the appellant information about their objections to the proposal despite repeated requests. You argued that the appeal could have been dealt with by means of written representations and meetings between experts but during a period of twelve months or so the Council had been reluctant to attend meetings or answer letters. You submitted that this constituted unreasonable behaviour which justified a full award of costs.
3. In response, the Swale Borough Council argued that they had behaved reasonably given the complexity of the situation. This included the need for the Council to serve two Enforcement Notices and Stop Notices and to defend their case at Magistrates Court and the Crown Court as well as dealing with an application by the appellant for prior approval of the proposed building under Part 7 of Schedule 2 of the General Permitted Development Order. The Council submitted that they had based their decisions concerning the proposed building on the criterion of reasonable necessity and this had been adequately explained to the appellant by the planning officer and by means of a copy of his report to committee. The Council considered that the appellant had misunderstood the situation rather than there had been any lack of communication. A meeting had been held on site in January 1998 which had been useful to the Council and could have been useful to the appellant if more questions had been asked.
4. The Council submitted that the inquiry into the appeal had produced a considerable amount of extra information which would have been difficult to clarify by means of written representations. They also refuted the allegation about lack of knowledge of rural matters particularly since their planning witness had a considerable amount of planning experience and had taken specialist advice in this matter. In view of the above, the Council did not consider an award of costs to be justified.

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5. I have dealt with this application for costs in accordance with Circular 8/93. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expenditure unnecessarily. Paragraph 27 of Annex 3 to the Circular indicates that a planning authority is at risk of having an award of costs made against them if they have refused an appellant's request to discuss a planning application or that if, by adopting a more helpful approach, an appeal could have been avoided.

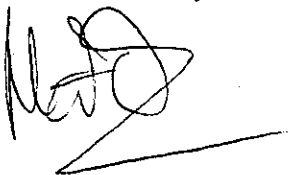
6. In this case, in view of the Council's involvement in enforcement proceedings in respect of the recreational use of the appeal site, it is not surprising that they were reluctant to negotiate with the appellant about the proposed building. However, the Council's decisions on the application for prior approval and the planning application for the proposed building were reasonably taken having regard to the relevant provisions of the development plan and other material considerations and the reasons for the decisions were, in my opinion, adequately explained in the planning officer's report to committee, a copy of which was sent to the appellant. These considerations included the need for the building in connection with forestry and the Council undertook the appropriate consultations to assist them in this aspect of their decisions. I am therefore satisfied that the Council were in full possession of the relevant information they needed to take their decisions and, whilst they may not have responded to all of your client's requests for further information, in my view it was unlikely that the Council would have reached different decisions, or that an appeal would have been avoided, if further discussion had taken place.

7. I understand that, quite rightly, you continued to try and negotiate with the Council after lodging the appeal, including arranging a site meeting in early 1998. The Council attended that meeting albeit without apparently assisting your client to any great extent, but it seems to me that by that stage there was very little prospect of avoiding the appeal by negotiating with the Council. Although the appeal could have been dealt with by means of written representations, I note that Mr Hearn asked for a hearing in his grounds of appeal. The Council not unreasonably requested an inquiry in view of the complex background to the case and the need to produce expert evidence on forestry matters. In the event a large amount of written material was in any case referred to the inquiry in support of the appellant's case, and it was helpful to myself and the Council at the Inquiry to be able to hear evidence and ask questions.

8. Having regard to the above and to the advice in Circular 8/93, I do not consider that the Council behaved unreasonably in this matter and I therefore conclude that your application for an award of costs is not justified.

9. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Mr Hearn for an award of costs against the Swale Borough Council.

Yours faithfully



MICHAEL CLARK FRTPFI FRICS
Inspector

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