APPEAL REF: APP/C1570/W/22/3296426

Outline planning application for the erection of up to 233 residential dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDS) and associated works, with vehicular access point from Radwinter Road. All matters reserved except for means of access

Land south of Radwinter Road (East of Griffin Place)

Costs application on behalf of the Rule 6 Party

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1. Planning Practice Guidance (PPG) confirms[1] that parties in planning appeals and other planning proceedings normally meet their own expenses.

2. However, costs may be awarded in a planning appeal where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary expense in the appeal process[2].

3. In that context, I attach a very recent costs decision letter (11 February 2022) concerning ***two*** applications for costs in relation to an appeal in East Cambridgeshire[3]. In that case:

    a. The LPA made an application for costs against the Appellant for acting unreasonably in challenging the Council's housing land supply position (a point which the Appellant lost on the merits); and

    b. The Appellant made an application for costs against the LPA, because the LPA's application was without merit and it should not have been necessary for the Appellant to deal with the unreasonable costs application.

4. It must be stressed that the Appellant lost the substantive point.

5. Nonetheless, the Inspector concluded on the Council's application that, "***As such, there is nothing unreasonable in the appellant challenging the Council's position. A professional witness presented sufficient evidence in relation to the disputed sites to explain why the appellant took a different view to the Council in each case. Such considerations are largely a matter of planning***

[1] Paragraph: 028 Reference ID: 16-028-20140306
[2] Paragraph: 030 Reference ID: 16-030-20140306
[3] APP/V0510/W/21/3282449

judgement. It is not inconceivable, however unlikely the Council considers it to be, that an Inspector could accept the appellant's evidence over that of the Council's in relation to each disputed site. There is, therefore, patently merit in pursuing the matter at appeal and nothing unreasonable about doing so".

6. In relation to the second application for costs, the Inspector concluded[4] that it should have been obvious to the LPA that the issue in question had at least the potential to be a highly significant material consideration in the context of the appeal, and that being the case it cannot be said that it was unreasonable for the other party to pursue the matter or that it was unnecessary to take up Inquiry time. Thus, "***The amount of evidence provided by the appellant in this case was proportionate, bearing in mind the limited amount of evidence that the Council itself put to the Inquiry. In light of these conclusions, it was unreasonable for the Council to seek an award of costs and to put the appellant to the additional time and expense necessary in responding to the application***".

7. The Inspector therefore went on to find (paragraphs 14 and 15) that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, had been demonstrated and that a partial award of costs was justified in relation to responding to the application for costs, limited to those costs incurred in responding the costs application.

8. This application is therefore founded in the PPG, and relates to considerations which are on all fours with the February costs decision; a Rule 6 Party must of course act reasonably (which in this case they have done – without them glaring errors would have escaped scrutiny in the section 106 agreement), and should not feel threatened by the spectre of costs applications hanging over them when participating in the appeal process.

Philip Kratz

GSC Solicitors LLP

13 September 2022

[4] Paragraph 13

The Planning Inspectorate

Costs Decisions

Inquiry held on 11-14 January 2022
Site visit made on 14 January 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2022

APPLICATION A
Costs application in relation to Appeal Ref: APP/V0510/W/21/3282449
Land to the North East of Broad Piece, Soham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by East Cambridgeshire District Council for a partial award of costs against Persimmon Homes East Midlands.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 175 dwellings and associated infrastructure.

APPLICATION B
Costs application in relation to Appeal Ref: APP/V0510/W/21/3282449
Land to the North East of Broad Piece, Soham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Persimmon Homes East Midlands for a partial award of costs against East Cambridgeshire District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 175 dwellings and associated infrastructure.

Decisions

1. Application A is refused.

2. Application B is allowed.

Application A - Submissions for East Cambridgeshire District Council

3. The application was made in writing and is not replicated here. In summary, it is said that the appellant acted unreasonably in challenging the Council's housing land supply position. This is because of the very modest deficit identified by the appellant, set against the Council's suggested healthy supply. There was a lack of evidence to support a position that a deliverable five-year supply was not demonstrable. If a demonstrable five-year supply exists, the exact figure above five years is irrelevant. It should not have been necessary to spend time at the Inquiry dealing with housing land supply matters.

Application A - Response by Persimmon Homes East Midlands

4. The response was made in writing and is not replicated here. In summary, it says that the Council's application is totally without merit. The assessment of housing land supply is a matter of evaluative planning judgement where there

will always be a range of reasonable professional views. Evidence was put forward to contest the relevant sites and a professional witness took part in a round table session on the topic. Even if a deliverable five-year supply could be demonstrated, the magnitude of the supply beyond the requisite five years is an important material consideration. The Council made a number of concessions during the round table session and that is indicative of the merit in the appellant's challenge.

Application B - Submissions for Persimmon Homes East Midlands

5. The Council's application for costs is without merit and it should not have been necessary for the appellant to deal with the unreasonable costs application.

Application B - Response by East Cambridgeshire District Council

6. The Council maintains its position that the appellant's challenge to its housing land supply position was unreasonable. As such, a costs application was the correct course of action.

Reasons

7. Planning Practice 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.

Application A

8. There was a large disparity between the parties as to the correct housing land supply position in the district for the purposes of the appeal. Although the appellant's suggested figure was only modestly below the requisite five-year supply, it was nonetheless below it.

9. As the Council points out, the question of whether a five-year supply exists is binary – either there is a five-year supply or there is not. This is important, because it is one route that can lead to the application of the National Planning Policy Framework's (the Framework) presumption in favour of sustainable development, the so called 'tilted balance'.

10. As such, there is nothing unreasonable in the appellant challenging the Council's position. A professional witness presented sufficient evidence in relation to the disputed sites to explain why the appellant took a different view to the Council in each case. Such considerations are largely a matter of planning judgement. It is not inconceivable, however unlikely the Council considers it to be, that an Inspector could accept the appellant's evidence over that of the Council's in relation to each disputed site. There is, therefore, patently merit in pursuing the matter at appeal and nothing unreasonable about doing so.

11. Furthermore, whilst the question of whether a five-year land supply can be demonstrated is a binary one for the purposes I have described above, that does not mean that the amount of supply beyond the five-year requirement is immaterial, just as the scale of any deficit would also be material in considering an appeal for residential development. As such, even if all of the 'category A'[1]

[1] Those sites that, according to the Framework's definition of 'deliverable', should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years…

sites were unchallenged, it would not be unreasonable to challenge the deliverability of the remaining disputed sites.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated for Application A.

Application B

13. It should have been obvious to the Council that the housing land supply position in the district had at least the potential to be a highly significant material consideration in the context of the appeal. That being the case, it cannot be said that it was unreasonable for the appellant to pursue the matter or that it was unnecessary to take up Inquiry time. The amount of evidence provided by the appellant in this case was proportionate, bearing in mind the limited amount of evidence that the Council itself put to the Inquiry. In light of these conclusions, it was unreasonable for the Council to seek an award of costs and to put the appellant to the additional time and expense necessary in responding to the application.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to Application B.

Costs Order

15. 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 East Cambridgeshire District Council shall pay to Persimmon Homes East Midlands, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding the Council's costs application (Application A); such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to East Cambridgeshire 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.

Michael Boniface

INSPECTOR