

Costs Decision

Inquiry opened on 1 November 2016

Site visit made on 21 November 2016

by C J Ball DArch DCons RIBA IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 January 2017

Costs application in relation to Appeal Ref: APP/W0340/W/16/3146156 Land south of Man's Hill, Burghfield Common, Reading RG7 3BD

- 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 Gladman Developments Ltd for a partial award of costs against West Berkshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for up to 70 residential dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Mans Hill and associated ancillary works.
 - The inquiry sat for 4 days on 1-4 November 2016.
-

Decision

1. The application for an award of costs is refused.

The submissions for Gladman Developments Ltd

The costs application was submitted in writing and is summarised here.

2. In its Statement of Case the Council explicitly referred to its *Local Plan Annual Monitoring Report – Housing (2015)* to justify its position regarding a 5 year housing land supply (HLS). The applicant prepared his evidence on that basis ready for the programmed exchange of proofs on 4 October 2016. The Council provided comments on the then draft statement of common ground on 30 September but did not seek amendments to the relevant paragraph which relied on the 2015 HLS assessment. On the same day the Council published its latest position on HLS, the *Five year Housing Land Supply at September 2016*. The applicant was only alerted to the existence of this document when the Council sought to add it to the Core Documents list. At no point prior to its publication did the Council inform the applicant that a new HLS assessment was being prepared
 3. The Council admits that it would have been reasonable to have informed the applicant of the preparation of the 2016 HLS assessment, a clear concession of unreasonable behaviour. The applicant does not complain about the production of the 2016 HLS assessment nor its admissibility to the inquiry. It provides the Council's up-to-date view of deliverable supply and therefore will assist the Inspector. The complaint is that the Council was preparing the assessment some months prior to its publication, from August 2016, but did not inform the applicant until the day of its publication. Proofs were due for exchange two
-

working days later. Had the Council acted reasonably, it would have mentioned the preparation of the document so that the applicant did not engage in abortive work. This was clearly unreasonable behaviour.

4. Had the Council acted reasonably it would have informed the applicant that publication of an updated HLS assessment was programmed for 30 September, close to the exchange of evidence. In those circumstances the parties could have agreed an extension of time with the Planning Inspectorate for submission of evidence. As it was, by 30 September the applicant's team had substantially completed its evidence. In particular Mrs Mulliner had based her evidence on the 2015 HLS document, Mr Waters had considered the same document in the context of the planning balance and Counsel had reviewed the proofs. Had the Council acted reasonably, this work would have been completed within an agreed extended deadline. The extra work by the applicant's team between 30 September and the subsequently extended deadline would not have been necessary.
5. The Council's unreasonable behaviour resulted in the unnecessary and wasted cost of abortive work in preparing evidence based on outdated documentation.

The response by West Berkshire Council

6. When the Council's Statement of Case was issued in May 2016 the HLS update was not in prospect. With regard to not advising the applicant before 30 September of the impending update, the Council is under extreme pressure with significant resourcing issues. Preparation of the DPD, the homework and consultations took up significant staff resources. Three case officers were fully involved. Another inquiry starts next week, so that there have been overlapping deadlines. This does not assist the applicant but explains the position. There was no deliberate intention to not inform the applicant. The circumstance in which the Council finds itself affects whether it should be found to have behaved unreasonably.
7. Housing land supply was an identified issue at the inquiry. It is often the case that an update is an appendix to a proof, leading to a rebuttal proof from the other side. In this case the update was provided before proofs were exchanged so that there was no need for additional rebuttal proofs. That is not unreasonable. In fact, as Mrs Peddie's note (Document C15) shows, there was very little difference between the 2015 and 2016 positions, that difference relating to lapsed sites. Any abortive work in looking at the update would have been 'de minimis', relating only to the lapsed sites. The inquiry was not delayed and any additional expense incurred was very limited.

Final response by Gladman Developments Ltd

8. It would have taken a simple email or call to the applicant to warn him that the HLS update was in preparation. That would not have taken long. In any event, unreasonable behaviour is an objective consideration, not subjective relying on circumstances, however regrettable. The Council now says there are limited differences between the 2015 and the 2016 positions. However, the only way the applicant could check that was to go through the complex documents and compare them. That exercise was done. If Mrs Peddie's note, issued today, had been issued in advance of the 2016 update it would have saved time. As it is, the note supports the submission, providing the answer to the complaint. Nothing Mrs Peddie has said overcomes the claim.

Reasons

9. The 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.
10. The monitoring and annual update of HLS figures is a necessary and important part of the planning regime. The failure of the Council, for whatever reason, to inform the applicant that an update was in preparation, that it would be published so close to the programmed exchange of proofs and that it would be relied on in evidence is clearly unreasonable behaviour. While I understand the difficulties of working with stretched resources, which may have led to this oversight, that cannot excuse such behaviour.
11. Housing land supply and its implications was a key issue at the inquiry and it is clearly important that the inquiry considered up-to-date evidence. It was right of the Council to provide the update, despite its lateness in the proceedings. This is far from unusual, with similar late updates being submitted at various stages in many inquiries. The normal procedure is to give the parties sufficient time to comment on them. In this case, following a request from the applicant, the Inspectorate deferred the date for submission of proofs for a week to allow him to consider the impact of the update on his HLS evidence. Proofs were submitted by the agreed extended date and the inquiry took place as programmed.
12. It is likely, as the applicant recognises, that if the Council had confirmed at an earlier stage the expected publication of the update on 30 September, then the date for submission of proofs would have been extended anyway. In the event, the applicant was given sufficient time to amend his evidence before the inquiry took place. Updates in evidence are part and parcel of the normal appeal procedure. Parties are expected to deal with it. Depending on when it was submitted the applicant would have had to deal with the update anyway, at some time before, during or after the inquiry, whether by amended proof, supplementary evidence, rebuttal proof, evidence in chief, adjournment or post inquiry submissions. I am not convinced that the publication of the HLS update on 30 September resulted in additional work that would not have been reasonably required in any event. Thus, while the Council did act unreasonably, I consider that in the circumstances of this case that did not place the applicant at an unfair disadvantage or result in unnecessary additional work.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Colin Ball

Inspector