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## Costs Decision

Inquiry Held 6 - 9 June 2017

Site visit made on 9 June 2017

**by Olivia Spencer BA BSc DipArch RIBA**

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

**Decision date: 17 August 2017**

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### **Costs application in relation to Appeal Ref: APP/E2001/W/16/3165880 Land South of Back Lane, Holme-on-Spalding Moor YO43 4AW**

- 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 Riding of Yorkshire Council for a partial award of costs against Gladman Developments Ltd.
  - The inquiry was in connection with an appeal against the refusal of an application for planning permission for up to 175 residential dwellings (including 25% 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 points from Back Lane and Baileywood Lane and associated ancillary works. All matters reserved accept the main site access' off Back Lane and Baileywood Lane.
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### **Decision**

1. The application for a partial award of costs is allowed in the terms set out below.

#### **The submissions for East Riding of Yorkshire Council**

2. The costs application was submitted in writing at the Inquiry. The following additional points were made orally.
3. The response to the costs application has taken the appellant's case no further and does not address the central complaint of the application. Neither the written evidence of the appellant nor Mr Barrett points to a single paragraph of the South Cave decision where the approach adopted is disagreed with.
4. At paragraph 20 of the response it is stated '*Far from accepting the South Cave Inspector's reasons we have made clear through our evidence that the conclusions reached no longer remain valid for the reasons set out above*'. However none of the reasons argue that the approach of the Inspector was wrong. To make this argument now is unreasonable. The appellant could have challenged the South Cave decision if it was felt there had been an error of law. They chose not to do so.
5. Paragraph 12 of the response uses the phrase 'unrealistically optimistic'. This is not the correct test. What Mr Johnson for the appellant did not say is that there was no 'realistic prospect' of the sites being delivered. This is the test established by High Court authority.

6. Paragraph 14 of the response is a hollow submission. If the behaviour of the Council was really considered unreasonable a costs application would have been made.

### **The response by Gladman Developments Ltd**

7. The response was made in writing at the Inquiry.

### **Reasons**

8. 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.
9. It is evident from the South Cave decision that the same appellant in that appeal sought to challenge the Council's 5 year supply of deliverable housing sites on substantially the same grounds as in this appeal. The case put forward in both appeals sought to connect past delivery with future deliverability. The difference between the two and the consequence for an assessment of the 5 year supply position was dealt with in detail in the South Cave decision, and the appellant's case on this issue rejected.
10. It is true to say that time has moved on. The South Cave Inquiry was held in January 2017 and this appeal in June, resulting in an agreed increased housing requirement of some 240 dwellings and some new sites coming into the 5 year period as it rolls forward. The numbers of both are small and whilst the appellant in their response notes that the Council's claimed 5 year supply position has reduced as a result, the appellant's position is that the number of years supply has increased. That said it would not be unreasonable of the appellant to seek to challenge the deliverability of sites not previously examined at appeal or indeed sites previously considered where new evidence on their deliverability has come to light. That however has not been the appellant's case in this appeal. The same arguments concerning delivery and deliverability have been applied and site specific evidence of any change in circumstances since South Cave is essentially absent. In this respect the appellant has acted unreasonably.
11. Beyond the 5 year supply issue there is however little apparent similarity between the South Cave case and that of this appeal. The South Cave Inspector found that there would be significant harm to the character and appearance of the landscape and records that as a result it was common ground that there was, in these circumstances, no weight of material considerations that would justify a decision other than in accordance with the development plan. Accordingly the decision does not go on to examine the benefits put forward. Given the different site conditions in this case it was not unreasonable of the appellant to seek to justify the development on these grounds.
12. I find therefore that in pursuing a challenge to the Council's 5 year supply in the manner they did following publication of the South Cave appeal decision the appellant acted unreasonably resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance. However, and notwithstanding my conclusion on the appeal, I find no unreasonable behaviour in respect of the case made as to the weight to be given to the benefits of the proposal. Consequently I conclude a partial award of costs is justified.

### **Costs Order**

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 Gladman Developments Ltd shall pay to East Riding of Yorkshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred, since the publication of the South Cave appeal decision, in preparing for and appearing at the Inquiry in respect of the issue of 5 year supply of deliverable housing sites; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Gladman Developments Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Olivia Spencer*

INSPECTOR