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## Costs Decision

Inquiry held on 13 -16 and 20 June 2017

Site visit made on 21 June 2017

**by Phillip J G Ware BSc(Hons) DipTP MRTPI**

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

**Decision date: 22 August 2017**

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### **Costs application in relation to Appeal Ref: APP/F2605/W/16/3154813 Land south of Mallard Road, Watton, Norfolk**

- 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 Mark Dakeyne, Janet Strickland-Miller, Nicholas Rickett and Tesni Properties Ltd for a partial award of costs against Breckland District Council.
  - The Inquiry was in connection with an appeal against the refusal of planning permission for an outline proposal for up to 177 dwellings.
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### **Decision**

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

### **The submissions for Mark Dakeyne, Janet Strickland-Miller, Nicholas Rickett and Tesni Properties Ltd**

2. The appellants seek a partial award, relating to all the costs of the appeal aside from those related to their highway witness – who was called to address third party issues.
3. Landscape and townscape impact was assessed by Council officers against policy and a study of the settlement fringe, and officers clearly recommended that the proposal was acceptable in this respect. The Council's evidence to the Inquiry was notable for the virtual absence of any analysis to support the subsequent position of the authority.
4. In relation to the effect on the Breckland Special Protection Area (SPA) the Council chose not to accept the advice from their own consultants and from Natural England. In addition the Council ignored the judicial authority in the Morge case<sup>1</sup> in the light of the lack of objection from Natural England. The Council did not have regard to an appeal decision at Weeting<sup>2</sup>, which followed the same approach. The Council had no objective scientific evidence to contradict the view of Natural England, and the views of the Royal Society for the Protection of Birds (RSPB) cannot be elevated to this level.
5. At the time of determining the application the Council was unable to demonstrate a five year housing land supply, although the 'tilted balance' in paragraph 14 of the National Planning Policy Framework was agreed not to apply in this case. The need for market and affordable housing is a significant

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<sup>1</sup> CD B4

<sup>2</sup> CD C1

material consideration and the Council did not cooperate in reaching an agreement on housing matters. The position had changed by the time of the Inquiry and the Council then asserted that there was a five year supply. The authority would have been aware that it was appropriate and necessary for the appellant to call evidence on this matter. However this issue was not addressed by the Council, and the evidence for the authority on this point was virtually non-existent.

6. The Council's position was unreasonable and the costs of the appeal, less the highway evidence, should be awarded.

### **The response by Breckland District Council**

7. The level of harm in relation to landscape and townscape is a proper topic for the exercise of planning judgement. Objective tools can only take you so far and the matter comes down to personal judgement. The Council provided supporting evidence and acted reasonably.
8. No draft Statement of Common Ground on housing was produced by the appellants and there was no evidence from the appellant at the application or appeal stages to which the Council could have responded. The appellants' contentions regarding deliverability were made as part of the appellants' new evidence, and it was reasonable to deal with that issue at that time, although the evidence was late in the day. The subsequent discussions proved fruitful and the Inquiry was provided with the result.
9. The Council acted reasonably throughout and did not put the appellants to any unnecessary expense.

### **Reasons**

10. 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.
11. In relation to landscape and townscape, it is true that the appellants' evidence was comprehensive and detailed. This contrasted with the Council's position on appeal, which was less analytical and consisted of a series of assertions. However, although I found for the appellant in this respect, the Council's position was clear and was presented by an appropriately qualified witness.
12. The Council's position on the effect on the Breckland SPA differed from the advice of their own consultants, the officer's recommendation and the position of Natural England. The position of the RSPB was clearly argued but although they supported the Council's position they were not part of the case for the authority and cannot, in respect of this costs claim, be regarded as adding to the Council's case. With this background the Council needed to produce objective scientific evidence to substantiate its position, which it did by means of two very experienced and qualified witnesses. Its position was based on adopted development plan policy. The fact that I did not agree with the position of the authority does not imply that I found their evidence insubstantial.
13. The position regarding housing land supply changed during the course of the application and the subsequent appeal. Admittedly the Council's evidence was not detailed on this matter, but I can appreciate that the focus was on the

Housing Statement of Common Ground. I am not persuaded that the Council failed to cooperate in agreeing the position with the appellant and by the time of the Inquiry there was a good level of consensus – and a clear statement of those areas where the parties differed.

14. Overall, although I reached a different decision to that of the Council, I find that the authority produced evidence to substantiate each reason for refusal, and did not prevent or delay development which should clearly have been permitted.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*P. J. G. Ware*

Inspector