
Costs Report to the Secretary of State for Communities and Local Government

by Clive Hughes BA(Hons) MA DMS MRTPI

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

Date: 11 January 2017

TOWN AND COUNTRY PLANNING ACT

SUFFOLK COASTAL DISTRICT COUNCIL

APPEAL BY

CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD

APPLICATION FOR COSTS BY

CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD

AGAINST

SUFFOLK COASTAL DISTRICT COUNCIL

Inquiry opened on 25 September 2016

Land at Candlet Road, Felixstowe, Suffolk IP11 9RD

File Ref: APP/J3530/W/15/3138710

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Land at Candlet Road, Felixstowe, Suffolk IP11 9RD

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Christchurch Land & Estates (Felixstowe) Ltd for a partial award of costs against Suffolk Coastal District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure.
- The inquiry sat for 4 days on 27 to 30 September 2016.

Summary of Recommendation: That the application be allowed.

The Submissions for Christchurch Land & Estates (Felixstowe) Ltd

1. The appellant gave advance notice of an application for costs in an email to the Planning Inspectorate on 26 September 2016 which was copied to the District Council. At the Inquiry the appellant advised that this email formed the basis of the application and a copy was produced (Document ID11). The application for a partial award related to the first issue only (housing land supply).
2. The application was based on two main factors. First the failure of the Council to understand the law on the most basic question of the Inspector's approach to housing land supply and second, the unreasonable and internally inconsistent way in which the Council have addressed the Inspector at this appeal and the Felixstowe Peninsula Action Area Plan (FPAAP) Inspector. The Council explained the correct approach to the FPAAP Inspector so are aware that the approach in this appeal is incorrect. Had the Council adopted the correct approach it would have been aware that it does not have a five-year housing land supply. The Council wasted Inquiry time by persisting with an obviously unarguable position. This was contrary to advice in bullet points 1, 2, 3 and 5 of paragraph 16-49-20140306 (Document ID29).

The Response by Suffolk Coastal District Council (the Council)

3. The Council argued that this was a misconceived application seeking to import legal issues into matters of judgement. The concerns about unreasonable behaviour were unreasonable. The Council's evidence assesses the merits of this development proposal. Concerning the Bloor¹ case there was a challenge by the planning authority to the grant of permission. The Secretary of State (SoS) had accepted evidence from the appellant on the Full Objectively Assessed Housing Need (FOAHN) on the basis that there was no adopted development plan figure. The Council argued that this usurped the role of the planning authority and so it was an unlawful decision. These conclusions are consistent with the Council's closing submissions.
4. The situation is different here to the Gallagher² decision as here there is a development plan in place. It is reasonable, and right, to invite the SoS to use

¹ Stratford on Avon District Council v J S Bloor (Tewkesbury) Ltd (and others) [2013] EWHC 2074 (Admin) (Document ID2)

² Gallagher Homes Ltd & Lioncourt homes Ltd v Solihull MBC [2014] EWHC 1283 (Admin) (Document CLE1: Appendix 3)

the FOAHN figure in the adopted Core Strategy (CS) (a requirement of 7,900 new homes) and to treat cautiously any untested evidence. It is right to say it is not the role of this Inquiry or for the SoS to set the FOAHN.

5. Concerning the second arm of the application, the purpose of the August Update³ is set out in the document on page 1 and explained further in the Council's September 2016 Position Statement⁴ to the FPAAP Examining Inspector. The August Update provides better evidence of what the supply was on 1 April 2016 so there should be no objection to reliance on that figure. The later Position Statement deals with the arithmetical effect of correcting an earlier error, but there is no inconsistency. There was no unreasonable behaviour.

Conclusions

6. The Planning Practice Guidance (PPG) 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.
7. The FOAHN figure as set out in CS Policy SP2 (7,900 new dwellings) is out of date as the early review of the CS, as required by the final paragraph of that policy, has not been carried out. The cited timescale has not been met and so the figure of 7,900 can no longer be regarded as the FOAHN. Even when the figure was adopted it was known it was not the true FOAHN; it was accepted by the CS Inspector as being expedient to enable the CS to be found sound. The failure of the Council to undertake the early review of the CS in accordance with the timescale as set out in the Policy means that the figure is out of date. That is in accordance with the principle set out in *Dacorum*⁵.
8. On the basis of *Gallagher and Bloor* it is necessary for me to consider what the FOAHN should be. The figure given to the CS Inspector, and referred to in paragraph 3.27 of the CS, is 11,000 new homes. No other figure was advanced by the Council. While the appellant put forward other figures, all in excess of 11,000, these have not been tested at an Examination and so carry limited weight. In any event, as all the suggested figures exceed 11,000, that must be the starting point for any determination of the FOAHN.
9. If the requirement figure of 11,000 is used as the FOAHN the Council cannot demonstrate a five-year housing land supply regardless of the scale of the buffer and regardless of whether the August Update figures are included in the calculations. The Inspector in the *Framlingham*⁶ case made it clear that the 7,900 figure was out of date. The changed circumstances since then, set out by the Council in a separate paper to this Inquiry⁷, show that much progress is being made but do not justify the use of an out of date figure. I consider that the Council was unreasonable to continue to use the 7,900 figure after the *Framlingham* Inspector, in paragraph 22, had made it so clear that it is not based upon the FOAHN for the District.

³ Housing Land Supply Assessment 2016-2021 August 2016 Update (Document CD G19)

⁴ L P Examination: SCDC Position Statement Housing Land Supply (Document CD G21)

⁵ *Grand Union Investments v Dacorum BC* [2014] EWHC 1894 (Admin) (Document CD F6)

⁶ APP/J3530/W/15/3011466 – Land at Fairfield Road, Framlingham (25 April 2016) (Document CLE1: Appendix 11)

⁷ Factual changes since the *Framlingham* Decision (Document ID13)

10. I have also agreed with the appellant concerning the use of the August Update. I can understand the logic behind the Council's position as the availability of some sites only became clear after the start date of 1 April 2016. For example the site at Framlingham was allowed on appeal after that date although the scheme was in the system before that date. However, if an update is to be carried out it needs to be comprehensive and not just look at one factor, in this case the supply side. Otherwise the review is skewed. That was the view of the Inspector in the Forest of Dean⁸ case. It was also the view of this Council in its September 2016 Position Statement.
11. There seems to be a difference in the Council's approach to the August Update and the September Position Statement. The September approach seems to me to be correct. It was unreasonable for the Council to pursue both approaches as they are mutually exclusive.
12. For the reasons set out in my Report to the SoS I have concluded that the requirement figure of 7,900 should not be used and that the changes to the supply side as advanced in the August Update make the exercise unreliable. I consider that it was unreasonable for the Council to pursue these arguments at the Inquiry and that it resulted in unnecessary expense for the appellant.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and so a partial award of costs is justified. That award should be limited to the costs incurred in respect of the issue of housing land supply. I therefore **recommend** that the application be allowed.

Clive Hughes

Inspector

⁸ APP/P1615/A/14/2228466 – Land off Chartist Way, Staunton (Document CLE1: Appendix 27)