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## Costs Decision

Inquiry Held on 8, 9 and 10 August 2017

Site visit made on 7 August 2017

**by P W Clark MA MRTPI MCMI**

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

**Decision date: 16 October 2017**

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### **Costs application in relation to Appeal Ref: APP/J3530/W/16/3160194 Land East of Bell Lane, Kesgrave**

- 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 Limited and BPT Limited for a full award of costs against Suffolk Coastal District Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for 300 dwellings, provision of land for a primary school and associated landscaping and open space.
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### **Decision**

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

### **The submissions for Persimmon Homes Limited and BPT Limited**

2. These are made in writing and so are not summarised here.

### **The response by Suffolk Coastal District Council**

3. This is made in writing and so is not summarised here.

### **Reasons**

4. 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.
5. The Council's main effort in defending its decision was concentrated into successfully justifying its contention that there were no disproportionate benefits arising from the development as a result of the Council's housing land supply position. But, it should not have been necessary for the appellants to argue that point in the first place because, as my substantive decision on the appeal itself confirms, there is little or no substance in the Council's reasons for refusal. Such substance as there was would normally be outweighed by the benefits of the development proposed even without any disproportionate or urgent housing need.
6. To that extent therefore, I agree that the Council's behaviour was unreasonable. Unnecessary or wasted costs were incurred in making the case

for an overriding housing benefit and in challenging the Council's reasons for refusal.

7. However, once an appeal is made, a proposal is considered *ab initio*.<sup>1</sup> During the consideration of the objections made by third parties it became apparent that the proposal was not in a sustainable location and that the harm this would cause justified dismissal of the appeal. In such circumstances, a full award of the costs of the appeal is not appropriate. A partial award is made, limited to the costs incurred in making the case for an overriding housing benefit and in challenging the Council's reasons for refusal.
8. 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.

### **Costs Order**

9. 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 Suffolk Coastal District Council shall pay to Persimmon Homes Limited and BPT Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in making the case for an overriding housing benefit and in challenging the Council's reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicants are now invited to submit to Suffolk Coastal 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.

*P. W. Clark*

Inspector

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<sup>1</sup> This Latin phrase means afresh, from the beginning.