



Costs Decision

Inquiry Held on 7 August 2017

Site visit made on 16 August 2017

by **S R G Baird BA(Hons) MRTPI**

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

Decision date: 02 November 2017

Costs application in relation to Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ

- 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 Limited.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 380 residential dwellings (Use Class C3, including up to 25% affordable housing), local centre with a children's day nursery (Use Class D1); a convenience store with up to 280 sq. m of retail floor space (Use Class A1); a 60 bed care home (Use Class C2); formal and informal public open space to include allotments, community orchard, children's play area, skate park and multiple use games area; structural planting and landscaping; surface water flood mitigation and attenuation and associated ancillary works.
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Decision

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

The submissions for East Riding of Yorkshire Council

2. The application was submitted in writing at the inquiry.

The response by Gladman Developments Limited

3. The response was made in writing at the inquiry.

Reasons

4. 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. Planning Practice Guidance (PPG) indicates that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the appeal follows a recent appeal decision in respect of a very similar development on substantially the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period¹
5. The development plan is the East Riding of Yorkshire Local Plan Strategy Document adopted in April 2016 and the East Riding of Yorkshire Local Plans

¹ Paragraph: 053 Reference ID: 16-053-20140306.

Allocation Document adopted in July 2016. The Examining Inspector concluded that the lpa could demonstrate a 5-year HLS. Subsequently, this appellant appealed² against a decision by the local planning authority (lpa) to refuse planning permission for residential development on land at South Cave. A key issue in that case was whether the lpa could demonstrate a 5-year housing land supply (HLS). It is not unreasonable for the appellant seek to prove that a 5-year HLS could not be demonstrated. However, as accepted by the appellant, the onus is on the appellant to show that the conclusions reached both by the Local Plan Inspector and the South Cave Inspector no longer held good i.e. circumstances have changed.

6. At the South Cave inquiry, a key element of the appellant's case was the connection between past delivery with future deliverability, the difference between them and the effect on the assessment of the 5-year HLS. I note in passing that this argument also played a key role in the evidence to the Holme-on-Spalding Moor inquiry. The South Cave appeal also dealt with the relevance and implications of the Wainhomes³ and St Modwen Developments⁴ judgements relating to deliverability and delivery and how the difference between them impacts on the 5-year HLS. Having regard to all these factors, the Inspector's decision in the South Cave appeal comprehensively rejected the appellant's case.
7. Since the Local Plan examinations and the South Cave inquiry there have been no changes in national planning policy relating to the 5-year HLS. Almost all of the disputed sites before me were before the South Cave Inspector with generally the same information listed for each site. It struck me that the appellant promoted the same arguments concerning deliverability and delivery. In continuing to promote this argument the appellant sought to rely on some new points. These were: (i) that the assessment had moved into a new monitoring year; (ii) the inclusion of sites within the Prospectus⁵ (iii) recent submissions by the House Builders Federation (HBF) and (iv) the results of further investigations into the disputed sites.
8. The appellant accepted that entry into the new monitoring year did not justify reaching a different conclusion to the South Cave Inspector. Although the Prospectus was published after the close of the South Cave inquiry, following submissions by the parties that Inspector considered its relevance in assessing delivery and dismissed it. Moreover, the appellant acknowledges that the inclusion of a site within the Prospectus does not go to the heart of whether a site is deliverable.
9. As to the contribution of the HBF, these points were not before the South Cave Inspector. The key suggestion by the HBF supports the contention by the appellant that for allocated sites to be included within the 5-year supply there should be an identified commitment from a landowner/developer to bring the site forward within 5 years. This reflects the difference between deliverability and delivery as clarified by the St Modwen judgement. Moreover, requiring evidence of a landowner/developer commitment is not a criterion that is reflected in either national guidance or, as far as I am aware, case law.

² APP/E2001/W/16/3151699.

³ Wainhomes(South West) Holdings and (1) The Secretary of State for Communities and Local Government (1) Wilshire Council (2) Christopher Ralph Cornell and Sarah Cecilia Cornell. [2013] EWHC 597 (Admin).

⁴ St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and Save our Ferriby Action Group [2016] EWHC 968 (Admin).

⁵ East Riding of Yorkshire Council Housing Sites Prospectus February 2017.

10. Following the Holme-on-Spalding Moor inquiry, the appellant's further investigations were an attempt to show that the situation had changed. This involved contacting agents/landowners seeking information on their intentions and or the current position. However, in many cases no contact was able to be made, in others there was an indication, albeit sparse, that discussions were taking place between landowners and developers and in others the information clearly contradicted recent information given to the lpa by the same agents/landowners. In this context, it appears to me that this exercise as carried out could not reasonably amount to the clear evidence required to show that there is no realistic prospect that the sites could not come forward within the 5-year period.
11. Drawing all of the above together, I consider that in pursuing the continued challenge to the lpa's submission that it has a 5-year HLS in the manner advanced at this inquiry, the appellant has acted unreasonably resulting in the lpa incurring unnecessary or wasted expenditure. Accordingly a partial award of costs is justified.

Costs Order

12. 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 Limited 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, 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.
13. The applicant is now invited to submit to Gladman Developments Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

George Baird

Inspector