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## Costs Decision

Site visit made on 24 September 2018

**by Helen Hockenhull BA(Hons) B.PI MRTPI**

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

**Decision date: 26 October 2018**

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### **Costs application in relation to Appeal Ref: APP/H0928/W/18/3204421 Midtown Farm, Clifton, near Penrith, Cumbria CA10 2EE**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr John Carruthers for a full award of costs against Eden District Council.
  - The appeal was against the refusal of planning permission for a new four bed detached dwelling.
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### **Decision**

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

### **Reasons**

2. 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.
3. The applicant seeks an award of costs on the basis of two substantive grounds. Firstly that the Council when determining the planning application should have acknowledged that they could not demonstrate a 5 year supply of deliverable housing land and therefore in line with the National Planning Policy Framework should have engaged the tilted balance. Secondly the applicant asserts that the Council failed to consider relevant policies of the adopted development plan, specifically the Core Strategy when considering the principles of the development. These actions constituted unreasonable behaviour as the Council had not properly exercised its development management function and acted contrary to or not followed well established case law.
4. Before I consider these grounds further it must be noted that the Eden Local Plan has now been adopted. The Council can demonstrate a 5 year supply of housing land and therefore policies most important to the determination of this appeal, namely those relating to the supply of housing, are not out of date. Clearly the context for determining this appeal has now significantly changed.
5. The original planning application was refused on 18 March 2018. I note that there was no reference to the lack of a 5 year housing land supply in the Officers delegated report. The Council accepts that this position was not specifically referred to in this document. The Council's appeal statement however does recognise the shortfall and goes on to argue that this is a

temporary position which would be rectified once the emerging Eden Local Plan was formally adopted. As I have already explained this has now taken place.

6. I recognise that the Local Plan has progressed to adoption since the original planning application submission and therefore the weight to be given to it has increased over time. However at the time the planning application was determined and also when the appeal was submitted the Council could not demonstrate a 5 year housing land supply. In these circumstances, in accordance with paragraph 11 of the Framework, the tilted balance should have been applied. No objective analysis of the adverse impacts and the benefits of the proposal have been put forward by the Council. In contrast the Council made reference to an appeal in Allerdale<sup>1</sup> and argued that the shortfall was a temporary circumstance and as a short term problem should be weighed against any permanent harm. In my view the Council did not properly exercise their development management responsibilities in this regard and have not followed established case law with regard to the approach to decision making. I find that this represents unreasonable behaviour.
7. In terms of the principle of the development, the Council in their delegated report made reference to adopted policies of the Core Strategy (CS). Whilst specific analysis of CS Policies CS1 and CS2 which set out the spatial strategy did not occur, the Council assessed the application against the then draft Policy LS1 of the Local Plan which outlined the Council's Location Strategy for the borough. This Policy does not conflict with the Core Strategy but provides further criteria which must be met. I consider it was not unreasonable of the Council to assess the application against the then draft locational policy rather than the relevant CS policies, in light of the increasing weight to be given to the Local Plan.
8. In summary I have found unreasonable behaviour on the first substantive ground. However whilst the tilted balance should have been engaged, I consider that in light of the social and environmental harm originally identified by the Council, it was likely that the application would have been refused in any event. As an appeal would have been necessary, the applicant has not incurred unnecessary expense in the appeal process. I therefore conclude that the application for an award of costs is not justified.

## **Conclusion**

9. Whilst I consider that unreasonable behaviour has occurred, unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. Consequently for the reasons given above, the application for full award of costs is refused.

*Helen Hockenhull*

INSPECTOR

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<sup>1</sup> APP/G098/A/13/2193690