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## Costs Decision

Hearing Held on 12 & 13 February 2019

Site visit made on 13 February 2019

**by Sarah Housden BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> April 2019**

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### **Costs application in relation to Appeal Ref: APP/P1045/W/17/3188285 Land east of Les Ardennes, Mugginton Lane End, Hulland Ward, DE6 3EE**

- 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 Mrs Pamela Fox for a partial award of costs against Derbyshire Dales District Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for 'application (all matters except for access to be reserved) for the residential development of up to 17 dwellings with associated infrastructure (one access off Mugginton Lane End)'
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### **Decision**

1. The application for a partial award of costs is refused.

### **Procedural Matter**

2. The appellant's written application for costs and the Council's verbal response were made before the close of the hearing.
3. The appeal scheme is a re-determination of an earlier appeal decision which was quashed by the order of the High Court.

### **The submissions for Mrs Pamela Fox**

3. The basis of the appellant's claim is that the Council adopted an unreasonable position in relation to the five year housing land supply (5YHLS), causing the appellant to incur additional work for the assessment of additional evidence provided by the Council in the run up to the hearing.
4. With particular reference to the *Woolpit*<sup>1</sup> decision, the appellant contends that the Council's Annual Position Statement (APS) on 5YHLS should not have been added to or supplemented by events and information occurring after the 'cut off' date for the relevant five year monitoring period, for example the submission of reserved matters applications. In this case, the Council's APS dealt with the five year period 1.4.18 to 31.3.23 based on monitoring data as at 31.3.18.
5. It is argued that as a result of the Council's approach, the appellant incurred unnecessary expense in relation to three work areas. These are preparing the

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<sup>1</sup> Appeal Reference APP/W3520/W/18/3194926

final comments on 5YHLS which were contained in the appellant's letter of 15.1.19, work on 5YHLS between 15.1.19 and 11.2.19 when a revised Statement of Common Ground (revised SoCG) was agreed and for one day of the hearing on the basis that the appeal could have been determined by written representations had the 5YHLS position been agreed by the Council.

### **The response by Derbyshire Dales District Council**

6. The Council argues that unlike the *Woolpit* case, all of the sites discussed at the hearing were identified in the APS. The additional evidence provided sought to narrow down the number of sites in dispute and areas of disagreement which does not amount to a shift in the Council's position on the supply side. Furthermore, the Council argues that it could not have entered into the revised SoCG at an earlier stage in the appeal process.

### **Reasons**

7. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and this has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
8. At the start of the re-determined appeal the Council's latest assessment of land supply was based on the five year period from 1.4.17 to 31.3.22. The appellant indicated by letter dated 5.10.19 that the Council should prepare an up to date 5YHLS statement for the period 2018 – 2023 taking into account both the advice in the PPG on the evidence needed to demonstrate a deliverable supply and the implications of the *Woolpit* decision. The Council responded on 3.12.18 but the Appendix containing the 5YHLS APS was not with its statement. This was submitted on 14.12.18 and the date of the hearing was postponed from 15.1.19 to enable sufficient time for the appellant to respond taking into account the Christmas holiday period.
9. The PPG indicates that delay in providing information or failure to adhere to deadlines is one example of unreasonable behaviour by a local planning authority in relation to procedural matters where an award of costs may be made. Whilst the Council acted unreasonably in failing to provide the 5YHLS information in a timely manner, I have not been made aware of any additional expenses incurred by the appellant in responding to that information. Similarly, I have not been made aware of any additional expenses incurred as a result of the re-arranged hearing date.
10. The revised SoCG was done in response to my request to the parties to 'narrow down' the number of disputed sites for discussion at the hearing. The Council has acknowledged the erroneous calculation it made by using the Liverpool method to calculate the five year housing requirement and whilst unfortunate this does not amount to unreasonable behaviour.
11. In my decision on the appeal, I have treated the APS as the Council's annual update of 5YHLS but it does not have the status of an APS as provided for in paragraph 74 of the National Planning Policy Framework (the Framework). As such, it is inevitable that circumstances will change and it is reasonable that the decision should be made in the context of the most up to date information at the time of the appeal. Whilst I have found that the Council does not have a 5YHLS based on the evidence for specific sites, consideration of their

deliverability relies on planning judgement and a thorough examination of the evidence against the requirements set out in the Framework and PPG.

12. For the reasons outlined above I conclude that whilst the Council acted unreasonably by failing to submit the 5YHLS information in a timely manner, it has not led to unnecessary or wasted expense being incurred by the appellant and a partial award of costs is not justified.

*Sarah Housden*

INSPECTOR