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## Costs Decision

Hearing Held on 8 January 2020

Site visit made on 8 January 2020

**by Graham Chamberlain, BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> January 2020

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### **Costs application in relation to Appeal Ref: APP/G2815/W/19/3232099 Land to the west of numbers 7 - 12 The Willows, Thrapston, NN14 4LY**

- 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 Lourett Developments Ltd. for a partial award of costs against East Northamptonshire District Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for a residential development of four dwellings.
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### **Decision**

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

### **Reasons**

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The applicant's case, like the Council's rebuttal, was made in writing and supplemented orally at the hearing.
3. During the hearing the Council accepted that its first reason for refusal could have been articulated in a clearer way. For example, it refers to the scheme not being windfall development when it is<sup>1</sup>, and erroneously refers to Policy 11 1a of the JCS<sup>2</sup> (which relates to Growth Towns rather than Market Towns such as Thrapston). It also refers to Policy 2 of the RNOTP<sup>3</sup>, even though the Officer's report states that this policy is not relevant to the proposal. The reason for refusal therefore included inaccuracies and was a little muddled.
4. Nevertheless, at the hearing the Council clarified its concern that, in its view, the appeal site is in a rural area for the purposes of Policy 11 and that the development would not adhere to the criteria in the policy that permits housing in such areas. For the reasons given in my decision, I share the view of the Council that the proposal is contrary to Policy 11. In making this case, the Council had adequately addressed the points made by the applicant, including the relevance of a development in Raunds and the emerging Local Plan. As such, the first reason for refusal was not unjustified and the Council did not fail to have regard to the material considerations advanced by the applicant.

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<sup>1</sup> The point being that it is not windfall development within a defined urban area

<sup>2</sup> The North Northamptonshire Joint Core Strategy

<sup>3</sup> Rural North, Oundle and Thrapston Plan

5. The Council's third reason for refusal relates to the effect of the proposal on the street scene of The Willows. The Council's concerns were not vague and were properly articulated, being the proposed backland location of the development and the height of the dwellings. The acceptability of the height of the dwellings and their proposed backland location involves an element of subjective planning judgment. The Council reasonably exercised this judgment following a demonstrable appraisal of the character and appearance of the area. It was able to properly explain its concerns in the officer report, the appeal statement and at the hearing. Accordingly, there was no substantive failing in respect of this reason for refusal.
6. The Council's fourth reason for refusal flowed from a recommendation in the site specific preliminary ecological assessment submitted by the applicant that further surveys are required. The Council also took expert advice on this matter, which it followed. The applicant subsequently supplied these surveys, which must be taken as an indication that they were necessary. Upon receipt of these surveys, the Council reviewed them and withdrew the reason for refusal. Accordingly, there was no substantive error by the Council.
7. At the time of making the decision the status of the appeal site as an open space was justifiably unclear to the Council. This is because, although privately owned the site was not fenced, thereby affording the public access to it. Representations from members of the public explained that the site was used for recreation by them. Moreover, there was an historic intention for the appeal site to function as a public open space as part of The Willows development and the status of the planning obligation relating to this was unclear. Given these circumstances, the Council did not act unreasonably in refusing the application, being of a genuinely held opinion that the evidence indicated the appeal site to be an open space as defined by the National Planning Policy Framework. During the hearing the Council reflected on the applicant's submissions and verbal evidence and withdrew the reason for refusal. They are to be commended for reacting to the evidence once it was presented, as it demonstrates an objective approach to the matter.
8. The ability of the Council to demonstrate a five-year housing land supply became a significant matter in the appeal. The applicant challenged the Council's findings on this by submitting a statement specifically addressing this point. The Council initially stated that it would respond to this at the hearing but instead it subsequently referred the appellant to a recently published report to the Planning Policy Committee, which set out the Council's most up to date position. They were right to do this rather than bring the information to the hearing, which would likely have resulted in the need for an adjournment.
9. Nevertheless, the Council's assessment of its five-year housing land supply followed a deeply flawed methodology. In its list of deliverable sites, the Council included sites in its emerging Local Plan as well as unallocated sites not on a brownfield register and without planning permission. The Council also failed to provide any evidence regarding the deliverability of small allocated sites, regarding this to be disproportionate. This is at odds with the closed list definition in the Framework of what is a deliverable site. The Council accepted this at the hearing, which makes its position even more inexplicable. If the Council had properly applied the definition of 'deliverable' in the Framework, then it would have been very apparent that it is currently unable to demonstrate a five-year housing land supply.

10. I accept that a debate could be had over whether there is clear evidence over the deliverability of some of the 'Category B'<sup>4</sup> sites in the Council's supply. However, the inclusion of sites in the supply that clearly and knowingly fall outside the definition was unreasonable. The Council's ability to demonstrate a five-year housing land supply was entirely reliant on such sites. Accordingly, the Council should not have contested whether it could demonstrate a five-year housing land supply. In so doing, it acted unreasonably and put the applicant to the unnecessary expense of preparing evidence on this matter and presenting it at the hearing through an expert. A lot of time was spent on this matter at the hearing, which further compounded the unreasonable behaviour.
11. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, but only in so far as it relates to the Council pursuing an argument that it is able to demonstrate a five-year housing land supply. 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 East Northamptonshire District Council shall pay to Lourett Developments Ltd the costs of the appeal proceedings described in the heading of this decision in so far as they relate to Lourett Developments Ltd having to prepare a case regarding five-year housing land supply; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. Lourett Developments Ltd is now invited to submit to East Northamptonshire 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.

*Graham Chamberlain,*  
INSPECTOR

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<sup>4</sup> Sites listed under point B of the definition of deliverable in the Framework