
Costs Decisions

Hearing Held on 9 – 10 March 2021

Site visit made on 10 March 2021

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2021

Costs Application A in relation to Appeal Ref: APP/V0510/W/18/3213834 Land south of Main Street, Main Street, Witchford, Cambridgeshire

CB6 2HQ

- 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 East Cambridgeshire District Council for a partial award of costs against Abbey Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J. Holdsworth.
 - The appeal is in connection with an appeal against the refusal of planning permission for a proposal described as 'residential development of 31 dwellings, proposed access arrangement and associated works together with the setting aside of land for educational use by the Rackham Church of England Primary School'.
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Costs Application B in relation to Appeal Ref: APP/V0510/W/19/3227487 Land South and West of Nos 85 to 97 Main Street, Main Street, Witchford, Cambridgeshire CB6 2HQ

- 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 East Cambridgeshire District Council for a partial award of costs against Abbey Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J. Holdsworth.
 - The appeal is in connection with an appeal against the refusal of planning permission for a proposal described as 'residential development involving the erection of 33 dwellings, proposed access arrangements and associated works'.
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Decisions

1. Application A - The application for a partial award of costs is allowed in the terms set out below.
2. Application B - The application for a partial award of costs is allowed in the terms set out below.

Reasons

3. 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.
 4. Before and during the hearing the appellants submitted that a 20% buffer should be applied to the Council's five-year housing land supply calculations.
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This position was previously accurate given earlier Housing Delivery Test (HDT) calculations. However, the most recent HDT calculations confirm that the Council has approved enough development to assist in the delivery of 87% of the prescribed housing requirement over the last three years. Thus, there has not been significant under delivery as defined in the National Planning Policy Framework (the 'Framework') and therefore a 20% buffer is not appropriate when applying the clear requirements of Paragraph 73 of the Framework.

5. Nevertheless, the appellants pursued an argument that a 20% buffer should be applied, submitting that none of the buffers in Paragraph 73 of the Framework are relevant in this instance and therefore a default 20% buffer should be imposed as a matter of planning judgment. However, for the reasons I go into in my formal decision neither a 20% or 10% buffer is appropriate and the guidance in the PPG pertaining to this matter does not support the appellants' case. Paragraph 73 of the Framework is clearly written and gives three options, with a 5% buffer being the default position unless the circumstances in Paragraph 73 b) or c) are engaged. In this instance it is clear that they are not.
6. Therefore, the argument that a 20% buffer (or 10% buffer) should be applied had no reasonable prospect of succeeding. This is important because if the appellants had applied a 5% buffer then their own calculations, using their own assessment of deliverable sites in its entirety, would have established that there is currently a five-year housing land supply, albeit marginal.
7. As a result, the Council were put to unnecessary and wasted expense in addressing matters relating to how the five-year housing land supply should be calculated, including the buffer to be applied and a largely academic deliverability discussion. This included written submissions and fielding an expert at the hearing. A lot of time was spent on this matter at the hearing, which further compounded the unreasonable behaviour. Thus, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred and a partial award of costs is justified.

Costs Order

8. 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 Abby Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J. Holdsworth shall pay to East Cambridgeshire District Council the costs of the appeal proceedings described in the heading of this decision in so far as they relate to addressing the appellants' submissions relating to the calculation of the five year housing land supply; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. East Cambridgeshire District Council is now invited to submit to Abbey Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J. Holdsworth, 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