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## Costs Decision

Inquiry Held on 17 – 19 September, 24 – 26 September and 30 September 2024

Site visit made on 19 September 2024

**by Rory Cridland LLB (Hons), Solicitor**

an Inspector appointed by the Secretary of State

**Decision date: 18<sup>th</sup> November 2024**

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**Costs application in relation to Appeal Ref: APP/W0340/W/22/3312261**

**Land to the rear of the Hollies Nursing Home, Reading Road, Burghfield Common RG7 3LZ**

- 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 West Berkshire District Council for a partial award of costs against T A Fisher and Sons.
  - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road.
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### Decision

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

### The submissions for West Berkshire District Council

2. The application for costs was made in writing prior to the close of the Inquiry and it is not therefore necessary to repeat it in any detail. In summary, the Council argues that the appellant has acted unreasonably in raising an issue late in the appeal process and that its approach to 5-year housing land supply was fundamentally flawed and, as such, had no realistic prospect of success. As a result, the Council considers it has incurred wasted expense in the appeal process.

### The response by the appellant

3. The Appellant's response was made in writing after the close of the Inquiry. In summary, the Appellant contends that it was not possible for it to raise its concerns regarding housing land supply at an earlier stage as its submissions relied on matters that it only became aware of late in the appeal process.
4. Furthermore, the appellant considers that planning decisions should be based on the best available evidence and that its argument that a different assessment period should be used to calculate the Council's housing land supply position is not in itself unreasonable. Furthermore, it argues that the differences of opinion between itself and the Council on the government's proposed changes to the Framework and their implications for determining the appeal are not reflective of unreasonable conduct.

### Reasons

5. The Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only 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. Furthermore, it indicates that Appellants will be at risk of an award of costs being made against them if they, amongst other things, introduce fresh and substantial evidence at a late stage or where a ground of appeal had no real prospect of succeeding.
6. The Council raises both procedural and substantive grounds in respect of its application; namely that the Appellant raised the matter very late in the appeal process despite opportunities to raise it sooner and, in any event, its arguments on this matter were fundamentally flawed.
  7. Dealing first with the procedural grounds, the appellant first raised its concerns in relation to the Council's housing land supply position on 9 August 2024, just over a month before the Inquiry was due to open. Although this is late in the process, I accept that the appellant may not have been aware of the Local Plan Inspector's report until shortly before, and while it introduced a new issue late in the proceedings, its reasons for doing so were explained at the time.
  8. While I acknowledge that one of the aims of the costs regime is to encourage the submission of full and detailed evidence in a timely matter, where material information only becomes available late in the process, it is not unreasonable for an appellant to respond to it accordingly. I do not therefore consider a procedural award of costs is justified in the present circumstances.
  9. Turning then to the substantive grounds, the Council argues that in providing what it considers is a fundamentally flawed argument in regard to housing land supply, the appellant has acted unreasonably and put the Council to unnecessary expense in having to respond. In summary, it contends that the appellants suggested use of a base period of 2024/2029 to calculate the Council's housing land supply is fundamentally unsound and relies on incomplete information. However, while I accept that here are good reasons for relying on the Council's base period of 2023/2028, it is open to appellants to put forward alternatives where there is evidence that the Council's trajectory is out of date.
  10. Furthermore, while I agree with the Council that had the appellant made it clear earlier that it was not seeking to argue that paragraph 11(d) of the Framework was engaged, the matter might have been dealt with more efficiently and without the need to hear oral evidence, I note that the appellant did not actively pursue a case that paragraph 11(d) of the Framework was engaged. Indeed, this matter was clarified early in the round table discussion.
  11. Likewise, while my decision makes clear that the proposed changes to the Framework did not have a material bearing on the outcome of the appeal, it is not unreasonable for appellants to advance such arguments, particularly where reforms are announced and consulted upon during the appeal process. In the present case, while I do not agree with the appellant's arguments, they were nevertheless cogent and not entirely without merit.
  12. Furthermore, I accept that the Council will have undertaken much of the preparatory work in response to concerns raised by the Local Plan Inspector and any additional expense incurred is unlikely to be significant. Indeed, the Inquiry time spent dealing with housing land supply was a very small part of a much longer Inquiry.

13. Accordingly, I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Therefore, I consider an award of costs is not justified.

*Rory Cridland*

INSPECTOR