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## Costs Decision

Inquiry held on 7 - 9 October 2015

Site visit made on 12 October 2015

**by Karen L Baker DipTP MA DipMP MRTPI**

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

**Decision date: 15 December 2015**

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### **Costs application in relation to Appeal Ref: APP/P3040/A/14/2227522 Land at Abbey Lane, Aslockton**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Rushcliffe Borough Council for a full award of costs against Hallam Land Management and JAB Short.
  - The Inquiry was in connection with an appeal against the refusal of outline planning permission for the development of up to 75 residential dwellings incorporating open space, access and landscaping.
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### **Decision**

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

### **The Submissions for Rushcliffe Borough Council**

2. The application was made in writing on 12 October 2015.

### **The Response by Hallam Land Management and JAB Short**

3. The response was also made in writing on 19 October 2015.

### **Reasons**

4. I have considered this application for costs in the light of the Planning Practice Guidance (The Practice Guidance) and all the relevant circumstances. This advises that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
5. Paragraph 053 of The Practice Guidance says that the right of appeal should be exercised in a reasonable manner. It goes on to say that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. It then gives a list of examples of when this may occur, but the list is not exhaustive.
6. The outline planning application for the proposed development was refused by the Council on 12 September 2014, prior to the adoption of the Rushcliffe Local Plan Part 1: Core Strategy in December 2014. The Core Strategy sets out a requirement to provide a minimum of 13,150 new homes in the plan period (2011 to 2028)<sup>1</sup>. This requirement is not disputed by the appellants. The

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<sup>1</sup> Policy 3, Criterion 2

Council's delivery pattern of new homes over the plan period is also set out<sup>2</sup>, with the housing trajectory<sup>3</sup> indicating how this is expected to be achieved. I acknowledge that the housing trajectory and the housing land supply assessment set out in the adopted Core Strategy are based on the position at 1 April 2013. The Council's Housing Implementation Strategy 2013<sup>4</sup>, dated January 2014, indicates that, using the tranche approach, on 1 April 2013 the Council could demonstrate 5.03 years supply of deliverable housing land, with a further 895 dwellings (38%) capable of being brought forward from years 6-15 of the housing trajectory to provide a buffer. This calculation utilises a variation of the 'Liverpool' method to address under-delivery or over-delivery in the Borough over future years, which the Council states was accepted by the Local Plan Inspector and is included within the Core Strategy.

7. As part of its monitoring process, the Council reviewed its most recent Annual Monitoring Report (AMR) the 5 Year Housing Land Supply Assessment 2013/14<sup>5</sup>, as at 31 March 2014, in December 2014. This indicated that for the 5 year period 2014-2019 the Council could demonstrate a deliverable housing land supply of 5.97 years. However, this did not include a 20% buffer. For the purposes of this appeal, the Council has undertaken an exercise to update its 5 year housing land supply position as at 31 March 2015<sup>6</sup>. The Interim 5 Year Housing Land Supply Assessment 2014/15, as at 31 March 2015, indicates that the Council can demonstrate a 5.10 year supply of deliverable housing land, including a 20% buffer.
8. While the appellants take no issue with the housing requirement as established by the recently adopted Core Strategy, with regards to the delivery pattern of new homes predicted over the plan period included in Policy 3, they do not concur with the Council's approach to dealing with the shortfall in supply from the start of the plan period or the way the 20% buffer has been applied. Indeed, I concur with this view. Furthermore, the appellants dispute that sufficient provision has been made to meet this requirement, by raising concerns relating to the high level of risk to the predicted supply, which they say has materialised through the failure of Strategic Sites to deliver as expected; and, the significant delays in bringing forward the Local Plan Part 2.
9. I acknowledge the Court of Appeal judgement<sup>7</sup> referred to by the Council, however, I am satisfied that the arguments put forward by the appellants in respect of the housing land supply issue were reasonable in this case, particularly given the changes that have occurred since the adoption of the Core Strategy to the predicted delivery of Strategic Sites and the delay in the preparation of the Local Plan Part 2, which is not now expected to be adopted until 2017. I do not consider, therefore, that the appellants have acted unreasonably in this respect.
10. Although the Council's opinion was that the proposed development was contrary to the recently adopted Core Strategy, the appellants put forward substantial evidence to show why they considered that it would be consistent with and would not conflict with the development plan. I consider that this was a wholly reasonable approach to take.

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<sup>2</sup> Policy 3, Criterion 3

<sup>3</sup> Appendix D

<sup>4</sup> Core Document 42 (LPA12)

<sup>5</sup> Core Document 36 (LPA13)

<sup>6</sup> Core Document 37 (LPA22)

<sup>7</sup> Case No: C1/2013/2734

11. The Council considers that the proposed development would not be sustainable when tested against the 3 aspects of sustainability in the National Planning Policy Framework (The Framework). The appellants provided substantial evidence from expert witnesses to support their view that the proposed development would be sustainable, with which I concur. Although these are matters of judgement, with which the Council disagrees, I do not consider that the appellants acted unreasonably by presenting this element of their case, which was supported by substantial evidence.
12. I am satisfied that the appellants were justified in making this appeal and that it had a reasonable prospect of succeeding.
13. I consider, therefore, that unreasonable behaviour resulting in unnecessary expense, as described in The Practice Guidance, has not been demonstrated and conclude that an award of costs is not justified.

*Karen Baker*

INSPECTOR