

HOME FARM, BELMONT, HEREFORD

COSTS APPLICATION ON BEHALF OF THE APPELLANT

INTRODUCTION

1. All references are to Circular 03/09 unless otherwise stated ("the Circular").
2. The Appellant accepts the usual position is that each party pays its own costs: A7. However, as will be seen, the LPA's case at this appeal is very far from representing the "usual position".
3. When a costs application is justified the Circular encourages appellants to pursue substantiated applications for costs in a "robust but realistic way": A3, 8th indent.
4. The preconditions in A12 are all met
 - the award is made at the right time;
 - the LPA has acted unreasonably;
 - the application is for the costs of the Inquiry which should not have been necessary or alternatively for the costs associated with the 5 year housing land supply aspect of the Inquiry.

UNREASONABLE BEHAVIOUR: TOTAL AWARD

5. This was development which should have been permitted having regard to the Framework: B15. The delegated report does not even attempt to balance the pros and cons and wrongly treats the development as unacceptable "in principle": B29. It is not an answer to this criticism to say that permission would have been refused anyway if the balance had been undertaken for reasons AB gave in his XX.
6. The balance is an essential element of the correct approach – see Wolston Costs decision.¹

UNREASONABLE BEHAVIOUR: PARTIAL AWARD

7. HC's initial acceptance that it had no 5 year HLS was correct. This acknowledgement continues to be its official position other than for the purposes of this Inquiry.
8. The change in position is completely unjustified as XX of KG demonstrated. In particular KG was unable to point to any Secretary of State's / Inspector's decision which justified inclusion in the Supply side of HLS draft local plan sites where
 - (i) the LPA accepts (as here) that little weight can be attached to the policies of the emerging plan;

¹ AB 33

- (ii) the emerging plan has yet to reach the deposit stage when formal objections to it will be identified: see para 216 of the Framework.
9. The change in position required very considerable additional work by AB and took up the best part of the one day of Inquiry time.

AWARD

10. The award sought is for
- (i) a full award, or alternatively,
 - (ii) the additional costs occasioned by HC's change in position in relation to HLS.

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