Appeal Ref: APP/C1055/W/24/3356476

LPA Ref: 23/01631/OUT

APPEAL BY MILLER HOMES LTD
LAND WEST OF ROYAL HILL,
SPONDON,
DERBY

COSTS REBUTTAL

MADE ON BEHALF

OF THE APPELLANT

No5 CHAMBERS

BIRMINGHAM · LONDON · BRISTOL

1. This is a rebuttal to the Costs Response submitted by Derby City Council on 2 May 2025 ("the Costs Response").

2. At Paragraphs 1 and 2 of the Costs Response, the Council make much of the fact that the Appellant submitted their Costs Application just prior to the close of the Inquiry. It is argued that the Appellant disregarded the PPG and caused prejudice to the Council. And that the Council were somewhat blindsided by the application and were not allowed to submit any evidence. There are 7 issues with this submission:

   (i) First, the Council is reminded that the only time limit applicable to a costs application at inquiries is that it be made "*to the Inspector before the hearing or inquiry is closed*"[1]. Therefore, the Council's submissions that somehow the Appellant is late in their application or have disregarded the PPG is simply baseless. It has been made within time. The PPG clearly explains what is to happen if a costs application is made "late" and there is no doubt that this is not the case here[2].

   (ii) Second, as far as I am aware, no application for costs has ever been rejected because the application has not been provided at the start of the inquiry.

   (iii) Third, the Appellant had alerted the Council and the Inspector on Day 1 of the Inquiry, that the decision as to whether a costs application may be made was under review. Therefore, the Council could not have been blindsided by a costs application coming forward at the close of the inquiry.

   (iv) Fourth, the PPG clearly envisages scenarios where parties make costs applications after substantive evidence has been heard at inquiries, hence allowing applications to be made at any point prior to the close of the Inquiry; not necessarily strictly before any evidence is heard. Although it is a matter of good practice, where circumstances allow, for the application to be made

[1] Paragraph 035 Reference ID: 16-035-20161210
[2] Ibid

before the Inquiry, this is in no way shape or form a strict timeline adopted by the PPG to avoid prejudice for the parties. Therefore, to the extent that the Council are alleging that the Appellant's Costs Application prejudiced them simply due to its timing, the PPG itself does not recognize such a prejudice. Moreover, the Council have been given the opportunity to respond to Appellant's Costs Application.

(v) Fifth, the only matters for the Inspector to consider in making his Costs decision is whether the Council have demonstrated unreasonable behaviour and whether this has resulted in other parties incurring wasted expenses, as averred by the Appellant. The timing of the Appellant's costs application, especially where it has been made within the time limits set in the PPG, are plainly irrelevant to this consideration.

(vi) Sixth, the Council has suffered no prejudice as a result of the timing of the application. It presumably would not have presented it evidence any differently. And it has been given a very generous amount of time in which to provide a reply. They have not been rushed into responding. Far from it.

(vii) Seventh, the Council have to focus on this issue as there is very little else that it can say in defence of its unreasonable position at the inquiry, as demonstrated by each of the three councillors who decided to give evidence to the inquiry.

3. At paragraph 4 of the Costs Response, the Council allege that the Appellant is incorrect to assert that planning permission should have been granted but the PPG clearly identifies one of the examples of unreasonable behaviour by the Council as "*preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material*

considerations"[3]. Therefore, it is entirely reasonable for the Appellant to make this assertion, especially in light of the councillors refusal to accept the consequences of not having a 5 year supply of housing land and the consequences of not having an up-to-date local plan, their extraordinary unwillingness to accept that reality, and the overwhelming benefits of the Proposal versus the single harm identified as the reason for refusal.

4. At paragraph 5, the Council seem to suggest that they always accepted that Policy CP18 is out-of-date as a result of paragraph 11 of the NPPF. This is plainly untrue and contrary to the evidence given by Cllr Holmes at the Inquiry.

5. Cllr Holmes in his XX was taken through paragraph 11 of the NPPF and footnote 8 and asked repeatedly whether, as a result, Policy CP18 was out-of-date. His repeated response was that it was "relevant" and, finally, that it was "not out-of-date". Therefore, any other characterization of Cllr Holmes' evidence is plainly wrong. Moreover, Cllr Holmes' position on Policy CP18 is contrary to established case law as outlined at the Inquiry.

6. The Council assert that they accepted Policy CP18 was out-of-date at Section 8 of the Main SoCG, however, the only mention of Policy CP18 under this section is that *"[i]t is agreed that the Green Wedge contained within Policy CP18 does not offer protection from the tilted balance as per NPPF <u>footnote 7</u> to paragraph 11(d)"* (emphasis added).

7. It is absurd to suggest that the Council were not given an opportunity to rebut the allegations as to their position on the datedness of Policy CP18 as this matter was ventilated at length during Cllr Holmes' XX.

8. The Appellant accepts that a Planning Committee may disagree with the recommendation of their planning officer, however, where they do so there must be a good reason for this. The fact that their sole reason for refusal was non-compliance

[3] Paragraph 049 Reference ID: 16-049-20140306

with an out-of-date policy is not a good reason, especially in light of the benefits of the Proposal and its overwhelming compliance with many of the Local Plan policies.

9. The unacceptable delay and lack of progress on various aspects of the local plan process was discussed at length at the Inquiry. The effect of this on the wider planning system run by the Council was also plain at the Inquiry in the numerous arguments about out-of-date policies and the poor housing land supply position. If Councillors are not held accountable for the lack of progress of their local plans and their decision to refuse permissions for development which come forth in the meantime, then it is unclear who should be.

10. For all the above reasons, the Council has demonstrated unreasonable behaviour in their refusal of planning permission and continued defence of this position (on the basis of non-compliance with an out-of-date policy) at the Appeal. Therefore, the Appellant maintains that full costs should be awarded against the Council.

6 May 2025

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FINAL REPLY TO THE COUNCIL'S RESPONSE TO THE APPLELLANT'S COSTS APPLICATION

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