

Costs Decision

Site visit made on 1 August 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 25 October 2016

Costs application in relation to Appeal Ref: APP/Z1510/W/16/3148072 Land off Braintree Road, Great Bardfield, Essex CM7 4BJ

- 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 Mr and Mrs Reed for a full award of costs against Braintree District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of up to 37 dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicants assert that the Council's reason why permission would not have been granted had the application been determined is weak, principally because the term sustainability is narrowly framed and should be about more than locating housing in towns and large villages. It is noted that Policy CS1 of the Core Strategy (CS) (2011) allocates 300 dwellings to 'other villages' such as Great Bardfield, and that the Framework recognises that development in one village may support services in a village nearby. The applicants also have referred to other appeal decisions within the District for development on the edge of settlements.
 4. There are some broad similarities between the appeal proposal and the other decisions referred to in terms of location. However, each case falls to be determined on its own merits, having regard to the particular circumstances of the site. In considering the three dimensions of sustainable development, the Council placed emphasis on the position of the village within the District settlement hierarchy, including the limited facilities in the village and the lack of employment uses in the appeal scheme. Furthermore, it provided justification of this position within the committee report, with reference to local and national planning policy, given clear reasons why it considered this particular site to be unsustainable. As such, although I came to a different view, its view properly substantiated, and thus the Council did not act unreasonably in this respect.
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5. It is also contended that the Council was unreasonable in changing its stance on housing land supply, and in not giving reasons why the application was not determined within the relevant time limit. During the determination of the application, the Council relied on the 2014 Annual Monitoring Report (AMR), as set out in the Committee report of 24 May 2016. On that basis the Council considered it could demonstrate a five year supply of deliverable housing sites. This position was maintained in the 2015 AMR.
6. Further to the above, the Council has supplied a number of appeal decisions in support of this position, dated from December 2015 to June 2016. However, the matter of housing land supply was not determinative in those appeals, and in the latter appeal at Bardfield Centre¹, although the appellant disputed that the Council had a 5 year housing land supply, the Inspector noted that they had not provided robust evidence to challenge the Council's position. Consequently the Council had no reason to believe that its housing land supply position was not robust.
7. The Council subsequently accepted a legal opinion in association with an Inquiry for a large residential development outside the village envelope of Silver End which concluded that a 5 year housing land supply could not be demonstrated.² It informed the Planning Inspectorate of this on 1 June 2016, after the appeal had been submitted. Although it is unfortunate that the applicants incurred additional costs in addressing this matter, I consider that the change of stance is justified to reflect the understanding of the position at the relevant times, and no unreasonable behaviour is demonstrated.
8. Turning to the non-determination of the application, the Council advised the applicants that the application would not be determined within the relevant time limit. The application was due to be determined by 8 February 2016, and the applicants were advised by the Council prior to this date that it was considering the designation in its local plan of a site outside the boundary of Great Bardfield, of which the appeal site forms part, for development including housing.
9. The decision not to include the larger site as a local plan allocation was made at the Local Plan Sub-Committee meeting on 16 March 2016, and the appeal was submitted on 11 April 2016 with the application underdetermined. In the circumstances it is not apparent why the scheme was not decided soon after the March meeting.
10. However, even if the Council was unreasonable in delaying the determination of the application, I have found that its objection to the scheme was properly substantiated and so it would not have led to any different decision, and thus did not lead the applicants to incur any unnecessary or wasted expense in pursuing the appeal.
11. Accordingly, an award of costs is not justified in this instance.

Claire Victory

INSPECTOR

¹ APP/Z1510/W/15/3141307

² APP/Z1510/W/16/3146968