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## Costs Decision

Site visit made on 14 August 2017

**by Peter Rose BA MRTPI DMS MCMi**

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

**Decision date: 4<sup>th</sup> September 2017**

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**Costs application in relation to Appeal Ref: APP/F2605/W/17/3173779  
Site east of Town Cottage, Town Green, Great Ellingham, Attleborough,  
NR17 1LP**

- 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 Bradley Beales for a full award of costs against Breckland Council.
  - The appeal was against the refusal of planning permission for 4 new houses with garages and access drive (as amended to 3 houses).
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### Decision

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

### The submissions for Mr Bradley Beales

2. The applicant's case is that the Council failed to properly consider his evidence regarding five-year housing land supply, and is seeking the costs of producing that evidence and in undertaking the appeal.

### The response by Breckland District Council

3. The Council rejects the suggestion that it acted unreasonably, and maintains the applicant was advised of the Council's latest assessment of its five-year supply during the application process.

### Reasons

#### *Background*

4. The *Planning Practice Guidance* (the *Guidance*) sets out various advice regarding the circumstances in which costs may be awarded<sup>1</sup>. It states that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. It explains that awards against local planning authorities may be either procedural in relation to completing the appeal process, or substantive in relation to the planning merits.
5. The *Guidance* identifies a range of possible circumstances in which an award of costs may be made against a local planning authority. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any

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<sup>1</sup> See, in particular, paragraph: 030 Reference ID: 16-030-20140306, and accompanying paragraphs 031, 046, 047, 048, 049 and 050

other material considerations. It also includes providing information that is shown to be manifestly inaccurate.

6. The *Guidance* further advises that where a local authority has exercised its duty to determine an application in a reasonable manner, it should not be liable for an award of costs.

### *Findings*

7. My section 78 decision found there are questions relating to the Council's ability to demonstrate a five-year housing land supply, and these have been legitimately raised by the applicant. Notwithstanding the Council's justification of its position, such doubts have been clearly highlighted by the applicant's submitted evidence, and they were considerations I took into account in reaching my decision.
8. Even so, the existence or otherwise of a five-year supply is but one material consideration to be set within the wider planning balances required by the *National Planning Policy Framework* and by section 38(6) of the Planning and Compulsory Purchase Act 2004.
9. In particular, I found the scheme lies outside the defined settlement boundary, would incur significant harm to local character and appearance, and would not be sustainable development. As reflected in my accompanying decision, the absence or otherwise of a five-year housing land supply and the particular evidence submitted in that regard by the applicant, did not alter the overall balance of considerations and, in particular, my assessment that the appeal should be dismissed.
10. The *Guidance* also explains that costs cannot be claimed for the period during the determination of a planning application<sup>2</sup>, but that all parties are expected to behave reasonably throughout the planning process.
11. I find that the Council's treatment of the applicant's previously submitted evidence in relation to five-year housing land supply was not a factor upon which either the outcome nor the conduct of this appeal turned.

### **Conclusion**

12. I therefore consider that unreasonable behaviour on the part of the authority resulting in unnecessary or wasted expense for the applicant incurred by the appeal, as indicated in the *Guidance*, has not been demonstrated. Accordingly, I conclude that an award of costs is not justified in this instance and the application is refused.

*Peter Rose*  
INSPECTOR

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<sup>2</sup> Paragraph: 033 Reference ID: 16-033-20140306