



Costs Decision

Site visit made on 14 May 2019

by N Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2019

Costs application in relation to Appeal Ref: APP/Z1510/W/19/3221214 Long Fen, Church Street, Great Maplestead, CO9 2RJ

- 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 & Mrs Peter and Janine Schwier for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for a new Passivhaus type dwelling.
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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 against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant considers that the Council has behaved unreasonably on a substantive matter, by preventing or delaying development which should clearly have been permitted and by unreasonably defending the appeal.
4. In effect, this is because the appellant is of the view that the Council should have approved the application, given the emergence of a court decision¹, the perceived implications of which, the appellant addressed in the planning application.
5. For the reasons set out in the appeal decision I agree with the Council that the proposal would not represent a suitable site for housing due to the lack of accessible services and facilities and the reliance that future occupiers would have on the use of a private car. As a result, it was not unreasonable for the Council to refuse planning permission on these grounds.
6. The appellant is also concerned that the Council should have applied the 'tilted balance' in favour of the proposal set out at paragraph 11 of the National Planning Policy Framework. I agree with the appellant that the way in which the Council described its current housing land supply position and whether policies of the development were up to date or not, in their view, was not clear.

¹ Braintree District Council v (1) Secretary of State for Communities and Local Government (2) Grey Reid Limited (3) Granville Developments [2018]

7. However, I note that the Council's reason for refusal did refer to the adverse impacts associated with the development significantly and demonstrably outweighing the benefits. Accordingly, I am satisfied that even had the Council clearly articulated that they considered that a positive land supply position could not be demonstrated, its decision would more likely than not have been the same, and the appeal would likely still have been lodged.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

N Smith

INSPECTOR