



Costs Decision

Site visit made on 6 December 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Costs application in relation to Appeal Ref: APP/V1505/W/21/3283535 Valkyrie, Broomhills Chase, Billericay, CM12 9TE

- 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 A Swainsbury for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of planning permission for erection of a single dwelling and associated access.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. They are at risk of an award of costs if they behave unreasonably by not determining similar cases in a consistent manner.
4. The Council has acted inconsistently in refusing the proposal due to its findings that Little Burstead was not a village and therefore the exception under paragraph 149 (e) was not engaged.
5. The Council have made reference to evidence which was prepared for its now withdrawn local plan (Basildon Borough Local Plan 2014-2034) which designated Little Burstead as an un-serviced settlement and it was on this basis the Council stated it should not be considered as a village.
6. However, the applicant has provided copies of the Basildon Council Settlement Hierarchy Review, 2015 which refers to Little Burstead Village when referencing un-serviced settlements, with Broomhills Chase Plotland listed separately. In the conclusions of the document it also refers to the villages of Little Burstead and Bowers Gifford. Furthermore, within the proposed Post Submission Modifications document at paragraph 3.3 reference is made to the village of Little Burstead. Therefore there is a degree of inconsistency in the Council's approach.

7. Furthermore, in determining an appeal within the vicinity of the appeal site¹, the Inspector came to the conclusion that the plotlands at Broomhills Chase form part of Little Burstead, which is a small village. Therefore, the Council have also departed from the findings of a previous Inspector.
8. Not determining similar cases in a consistent manner is a type of unreasonable behaviour listed in the PPG. In departing from the Inspector's findings in relation to whether or not Little Burstead should be considered as a village, it acted inconsistently and thus unreasonably. This left the appellant in a very difficult and unclear position. Had the Council acted in a more consistent manner then it's likely that the appeal, and the costs associated with it, could have been avoided altogether.

Conclusion

9. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Basildon Borough Council shall pay Mr A Swainsbury the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Basildon Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G Pannell

INSPECTOR

¹ APP/V1505/W/3249059 Land between The Willows (aka Crystal Cottage) and Cranbourne, Broomhills Chase, Billericay, CM12 9TH