



Costs Decision

Site visit made on 17 February 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Costs application in relation to Appeal Ref: APP/W3520/W/22/3291011 Land South of Mill Road, Wyverstone IP14 4SE

- 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 R Tustin for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of planning permission for erection of 2 no detached dwellings and garages (following demolition of poultry houses).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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. Local planning authorities risk an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.
3. The applicant claims that the Council's first reason for refusal is wholly inconsistent with other recent decisions it has made in the locality. It is further argued that the second reason for refusal could have been dealt with by way of a pre-commencement condition. The Council in response states that due weight was given to other decisions and to the change in circumstances since those decisions, but that it was justified in refusing permission for the reasons set out. On the second issue, the Council states that such a significant material consideration could not have been dealt with by condition.
4. The Council in its evidence reversed a previously accepted position that its locational policies, in particular CS1 and CS2 of the Core Strategy (September 2008) were out-of-date, having been found so at appeal in 2019 (APP/W3520/W/18/3194926). It also sought to distinguish the current appeal from others by pointing to differences in its housing land supply position at the time, and to the cumulative effect of these schemes in terms of creating an unsustainable pattern of development.
5. The sites in question are immediately opposite the appeal site, and therefore of no material difference to the appeal site in terms of the distance to the nearest services. The Council failed to explain this inconsistency with its previous decisions where it took a supportive position on accessibility. These were material considerations to which the Council failed to have proper regard.

6. In addition, the Council set aside its previous acceptance that certain development plan policies were out-of-date, stating in its Statement of Case that *'The current adopted local policies used to determine this application are fit for purpose [...] and do not conflict with the NPPF (July 2021).'* These policies were found to be out-of-date on the basis of inconsistency with the Framework, rather than solely by reason of a lack of a five year housing land supply. As such, this inconsistency still holds, regardless of the Council's improved housing position, and there was no cogent argument advanced by the Council for its complete reversal of position in this respect. The Council also asserted the site was 'isolated' in terms of the Framework, contrary to the position established by the Court of Appeal in *Braintree*¹ and ignoring the several other dwellings close to the site on Mill Lane.
7. Ultimately, the Council's evidence amounts to brief, vague assertions of generalised concerns regarding cumulative impact which were not supported by substantive evidence of excessive levels of development in the countryside or resultant harm. Moreover, it failed to take into account relevant material considerations or satisfactorily explain its departure from previous positions in terms of accessibility and the status of relevant development plan policies. This constitutes unreasonable behaviour contrary to the basic guidance of the PPG and the applicant has been faced with the unnecessary expense of contesting the first main issue of the appeal.
8. On the second part of the costs claim, it can be seen from my main decision that I agreed with the Council that the matter of protected species was not one that could be satisfactorily addressed by condition, notwithstanding that this course of action may have been taken on an application on a nearby site. I reached this conclusion on the specific evidence before me and with particular reference to the relevant government advice of Circular 2006/05. Consequently, I find no unreasonable behaviour by the Council in this respect.
9. For these reasons, I conclude that the Council has demonstrated unreasonable behaviour in respect of the first main issue, resulting in wasted expense for the applicant in contesting this main issue at appeal.

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 Mid Suffolk District Council shall pay to Mr R Tustin the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first main issue of the appeal, relating to the suitability of the site location for housing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the 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.

K. Savage INSPECTOR

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610