



Costs Decision

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2024

Costs application in relation to Appeal Ref: APP/F2605/W/24/3346657 Land to the west of South Pickenham Road, Swaffham PE37 8DA

- 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 Ms V Lewis for a full award of costs against Breckland Council.
 - The appeal was against the refusal of planning permission for outline permission for up to a total of 44 dwellings.
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Decision

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

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. Paragraphs 46-50 of the PPG provide examples of behaviours which may lead to a procedural or substantive award of costs against a local planning authority.
3. The appellant, as applicant for the purposes of the costs application, alleges the Council behaved unreasonably through failing to proactively consider the proposed vehicular access options; in submitting an unsubstantiated award of costs application; through failure to publish updated five-year housing land supply information by the date indicated during the Mileham appeal¹; and that the appeal was unnecessary and could have been avoided.
4. The appellant claims the local highway authority (LHA) failed to properly assess the proposed site access strategies. The appellant alleges that attempts to address this matter by way of a conversation were blocked by the Council, and wasted cost relating to the production of the Highways and Transportation Appeal Report (June 2024) was incurred.
5. Paragraph 8.5 of the LHA's Highways Statement of Case (August 2024) sets out the LHA's view on the alternative option of a ghost island right turn lane. Having considered the justification provided by the Highways and Transportation Appeal Report for departures from standards, the LHA agrees an acceptable detailed design could be developed that would not result in a severe impact on highway safety. The Highways and Transportation Appeal Report provides details of design standards and revised drawings for the proposed

¹ APP/F2605/W/24/3336631

ghost island junction, and thus provides information that could not readily be shared verbally. Therefore, the Highways and Transportation Appeal Report was necessary in demonstrating to the satisfaction of the LHA that a suitable junction could be achieved and was not an unnecessary or wasted expense.

6. The appellant alleges the Council's award of costs application is unfounded and thus amounts to unreasonable behaviour leading to wasted expense. Paragraph 029 of the PPG states "Local planning authorities, appellants and interested parties who have taken part in the [appeal] process, including statutory consultees, may apply for costs, or have costs awarded against them"². Since the PPG permits parties to apply for an award of costs, making such an application cannot constitute unreasonable behaviour.
7. The appellant suggests the Council refused to confirm its position in policy terms of the principle of location of housing, and in not re-assessing its five-year housing land supply, and claim to have incurred unnecessary or wasted expense in preparing evidence for the appeal including a review of the HLSS sites trajectory.
8. The Council's delegated report provides an assessment of the principle of the development of the site. In summary, the assessment indicates the proposal should be determined in accordance with the policies of the development plan, namely the Breckland Local Plan 2023 (BLP) and Swaffham Neighbourhood Plan, with the Framework forming a material consideration. The assessment identifies the site as lying outside the settlement boundary and concludes the proposal would fail to recognise the intrinsic character and beauty of the countryside and conflict with other relevant policies within the development plan. On this basis, the assessment found the principle of development would conflict with BLP Policy GEN05. The delegated report therefore set out clearly the Council's position in policy terms of the principle of the location of housing.
9. The current Housing Land Supply Statement (HLSS) was published in July 2023. During the Mileham appeal, it was suggested a revised HLSS is normally published annually in July/August. Paragraph 76 of the Framework requires the Council identify and update annually a supply of specific deliverable sites.
10. Taking 'annually' on its literal meaning of 'once per year', there remains opportunity for the Council to publish a 2024 HLSS update to a timetable of its choosing. The Framework does not require the data be published at 12-month intervals and the Council suggest it intends to publish its updated HLSS in late November 2024, in which case the requirement to provide an annual update would be satisfied.
11. Consequently, I do not consider the delay in publication of the updated HLSS amounts to unreasonable behaviour, nor do I have evidence the Council intended to purposefully mislead the Inspector at the Mileham appeal.
12. It is acknowledged the appellant's review of specific sites was detailed, and complex due to the absence of recent data. However, during the appeal, the Council provided up-to-date information on the delivery of sites disputed by the appellant. Therefore, I am satisfied the evidence provided by the Council for the purposes of the appeal was proportionate and sufficiently robust.

² Reference ID: 16-029-20140306

13. The appellant's review of sites demonstrated that some sites could no longer be deemed to be deliverable, and I have recommended such sites be discounted from the housing land supply calculation. Therefore, the appellant's review of sites was successful in updating the housing land supply position for the purposes of determining the appeal, and thus was not unnecessary.
14. The appellant suggests the appeal was unnecessary and should have been avoided or conducted through a written procedure, and that outstanding matters related only to the provision of the footway/cycleway, effects on landscape character, and application of the presumption in favour of sustainable development at paragraph 11d). As set out in the appeal decision, I have found the proposal would conflict with the development plan, and therefore it is inaccurate to conclude the appeal could have been avoided. Furthermore, the hearing was necessary for the purpose of providing structured discussion on evidence relating to the above matters.
15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Dade

INSPECTOR