



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 Breckland Council for a partial award of costs against Ms V Lewis.
 - 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 51-54 of the PPG provide examples of behaviours which may lead to a procedural or substantive award of costs against an appellant.
3. The Council, as applicant for purposes of the costs application, allege the appellant demonstrated unreasonable behaviour in disputing the Council's five-year housing land supply position and status of the Local Plan, which were recently considered at the 'Mileham appeal'¹, and gave incorrect information in their appeal submission. The Council suggest it incurred unnecessary or wasted expense from time spent considering disputed sites and the Local Plan's status.
4. Policy INF03 of the Breckland Local Plan 2023 requires the Council undertake a full Local Plan review and submit for examination by December 2024. During the Mileham appeal, the Council accepted the timetable for the Local Plan review had slipped. However, the Inspector considered the anticipated slippage of a few months was "relatively modest" and it was clear that the Council is actively continuing to progress the full review of the Local Plan. The Inspector concluded "...based on the evidence before me at this point, I find that the policies most relevant to this appeal are not out of date by virtue of the current timetable for submitting the Local Plan Review²".
5. On 30 July 2024, government published a consultation on proposed reforms to the Framework. This was accompanied by data showing changes to each local authority's Local Housing Need (LHN), based upon the method proposed in the

¹ APP/F2605/W/24/3336631

² Paragraph 25

government's consultation. During the hearing, the Council explained that if the proposed method is brought into effect, its LHN would significantly increase and may require more land be released for housing. This has created uncertainty for the Local Plan review and at present there is no timetable for the plan's submission. Therefore, the evidence in respect of the Local Plan review timetable has materially changed since the Mileham appeal.

6. In the Mileham appeal, the Council's latest published Five-Year Housing Land Supply Statement (5YLSS) was based on evidence at a 31 March 2023 base date. The Inspector noted an annual update of the 5YLSS was underway and that the Council undertakes an annual review of housing land supply.
7. Since the Council updates its housing land supply data annually, with this work already underway, it was not unreasonable for the appellant to expect the updated dataset to be available for the purposes of the current appeal. Moreover, based on the site-specific evidence provided by both parties, in assessing the 5YLSS's trajectory in my decision, I found the housing land supply position had significantly changed since the 5YLSS's publication and since determination of the Mileham appeal.
8. The Council alleges the appellant's evidence relating to some development sites was inaccurate. However, I have no reason to suspect the appellant's evidence was not prepared in good faith and using the best information available to the appellant at the time. Matters of data quality could have been readily resolved by the Council publishing its updated 5YLSS dataset. Therefore, I am satisfied the appellant's evidence was proportionate for the purposes of the appeal.
9. In addition, there remains dispute between the parties regarding the availability of Nutrient Neutrality mitigation measures and the effect on housing delivery. The Council considers the availability of mitigation to be rapidly improving, whilst the appellant's agent who is actively involved in the local development industry provides a more pessimistic view of the availability of credit schemes, timeliness of technological improvements, and effects on development viability.
10. For these reasons, I do not consider the appellant behaved unreasonably in adopting a sceptical view of the Council's housing land supply and status of the Local Plan. Furthermore, it should not have been burdensome on the Council to provide up-to-date information on disputed sites as the annual update of the 5YLSS was already underway, and the Council had already considered the status of the Local Plan in withdrawing its timetable for the Local Plan review. Therefore, it is not demonstrated that the Council incurred unnecessary or wasted expense from officer time spent on these matters.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Dade

INSPECTOR