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## Costs Decision

Hearing held on 26 July 2016

Site visit made on 26 July 2016

**by David Murray BA (Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 2<sup>nd</sup> September 2016**

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### **Costs application in relation to Appeal Ref: APP/L3245/W/16/3146986 Land to the north of Pulley Lane, Bayston Hill, Shrewsbury, Shropshire, SY3 0DW.**

- 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 Shropshire Council for a partial award of costs against GH Davies Farms Ltd.
  - The hearing was in connection with an appeal against the refusal of an application for the erection of up to 35 dwellings.
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### **Decision**

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

### **The submissions for the Council**

2. The Council makes an application for partial costs related to the issue of the effect of the proposed housing development on a recognised gap of undeveloped land between Meole Brace in Shrewsbury and Bayston Hill which development plan policy indicates should be protected from development. The Council has referred to other Inspectors' decisions which have given the protection of this gap significant weight. The schemes that have been permitted, like the affordable housing to the east of the site, are policy compliant. Despite this the appellant has put forward the same arguments in this case. The Council has spent time and resources on this case preparing a rebuttal to the appellant's restated arguments and the appellant and the agent's team have not learned the lessons from previous refusals and where appeals have been dismissed. The hearing has been unnecessarily longer because of the time that has had to be spent discussing the gap issue. This amounts to unreasonable behaviour by the appellant company and has resulted in the Council incurring the unnecessary expense of dealing with this issue.

### **The response on behalf of the appellant**

3. The appellant company and its team do not consider that the proposed development would harm the policy objective of retaining the gap between the two settlements. The policy does not place a total ban on development there and it is not unreasonable for the appellant to make a case to demonstrate that this proposal is acceptable. Further, the gap is not defined in detail and it has to be interpreted and a judgement made on whether any specific form of development would still retain the function of the gap. The Council has
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allowed housing development to take place on the neighbouring site to the east and on other sites along Pulley Lane which were both said to be in the gap. Further, Inspectors have indicated that not all areas of the gap are of equal value and the application site is mainly seen not on the skyline which was a concern on other schemes.

4. The appellant is entitled to make a case for the effect on the gap to be considered and weighed up and balanced with the other planning issues pertinent in this case. The lack of agreement with the Council over the effect on the gap does not amount to unreasonable behaviour by the appellant and the time spent by the Council on addressing this issue both in writing and at the hearing is not an unnecessary expense.

### **Reasons**

5. Setting aside the other planning issues that arose in this case, the appellant's team were clearly aware of the 'gap' issue and addressed it in their representations and submissions. The gap is referred to in SAMDev Policy S16.2(ii) as being between Bayston Hill and Meole Brace but otherwise the extent of undeveloped land is not clearly defined and a judgment has to be made about which land contributes to the gap. Further, the land in the gap is subject to natural and man-made features, like the A5 cutting and the Pulley Lane embankment, which result in areas where development may not have a material effect on the gap.
6. I am therefore satisfied that a planning judgement has to be made on whether any specific proposal lies in the gap and the effect that it will have on it. The appellant and its team are entitled to make a case on this point for consideration. While the Council referred to other appeal decisions which refer to the gap in a positive way, these were away from the site and were considered on their individual merits and my attention was not drawn to any recent planning history on the appeal site itself where the gap issue had been tested at appeal. The previous scheme for a care village on a larger area than the current site was submitted prior to the adoption of the current development plan and planning circumstances are likely to have been different then.
7. I am therefore satisfied that it was not unreasonable for the appellant and planning team to put forward the case that the proposal would not have a material effect on the retention of the undeveloped gap. In any event, part of the appellants' case was that the provisions of the development plan were out of date, as the Council could not demonstrate a five year supply of new housing sites in accordance with the full objective assessed housing need. If that case had prevailed, in accordance with national planning policy, the weight to be applied to the gap policy may have been reduced being a policy for the supply of housing at least in part, and that would have affected its consideration in the planning balance.
8. Overall, I am satisfied that the appellant did not act unreasonably in making a planning case for the development of the site even though that lay in the undeveloped area between Bayston Hill and Meole Brace and that the expenses incurred by the Council in response to the gap issue formed part of the normal costs that arose from it substantiating its refusal of planning permission at appeal.

**Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*David Murray*

INSPECTOR