
Costs Decisions

Hearing Held on 7 September 2021

Site visit made on 8 September 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of

Decision date: 24 September 2021

**Costs application in relation to Appeal Ref: APP/P0240/C/20/3262339
Land at Knyghton land adjacent to Toddbury Farm, off Mill Road, Little
Billington, Leighton Buzzard, LU7 9BP (Land between Toddbury Farm and
Greenacres)**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Central Bedfordshire Council for a full award of costs against Mr Dermott Barrett.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the creation of an area of hardstanding and building a fence on the land.
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**Costs application in relation to Appeal Ref: APP/P0240/C/20/3262343
Land at Knyghton land adjacent to Toddbury Farm, off Mill Road, Little
Billington, Leighton Buzzard, LU7 9BP (Land between Toddbury Farm and
Greenacres)**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Central Bedfordshire Council for a full award of costs against Mr Dermott Barrett.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of paddock land to use of the land for stationing of caravans for residential use.
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Decision

1. The applications for awards of costs are allowed in part the terms set out below.

Background

2. Application 1 relates to appeal A, Ref 3262339, and application 2 concerns appeal B, Ref 3262343.

The submissions for Central Bedfordshire Council

3. In advance of the hearing, the application was made in writing in respect of both appeals but was then supplemented orally at the hearing. The main points are as follows:
 - There has been procedural and substantive unreasonable behaviour.

- The operational development appeal A was supported by skeletal grounds which merely repeated those on which an appeal could be pursued. The material change of use appeal was initially supported only by the appeal form.
- The appellant's later statement of case, provided on 11 March 2021, relates to both appeals. It asserted a "need" case, but this was unsupported by any evidence.
- Criticisms of the Council's GTAA were also unsubstantiated, and whilst the appellant claimed the new local plan would not be adopted for a couple of years, it was adopted on 22nd July 2021.
- Evidence of gypsy status was also irrelevant as the statement of case indicated, "the site residents do not live on the disputed parts of the site."
- The case advanced does not address the correct policy approach in relation to Green Belt (GB) and there was no realistic prospect of success on ground (a).
- The very late withdrawal of ground (d) on appeal A and grounds (c), (d) and (e) of appeal B, illustrates the futility of the appeals. No evidence was ever provided to substantiate those grounds and they should not have been pursued.
- In terms of grounds (f) and (g), the statement of facts and grounds merely repeat those grounds of appeal and suggest no lesser steps or alternative compliance period. The statement of case provided on 11 March 2021 made no mention of grounds (f) and (g). They should not have been pursued.
- The appeals have not been supported by evidence. The appeals should not have been submitted in the first instance, and any reasonable review of the grounds would have occasioned their withdrawal at an early stage. The appellant failed to keep the appeals under review and a full award of costs is justified.
- The appellant's agent refers to other appeals in relation to sites nearby, and it is acknowledged that he has assisted in those cases. However, the circumstances are wholly different, and these appeals do not turn on what happens in those cases.
- The appellant's agent's personal circumstances are noted, but the applications are aimed at the appellant's conduct of the appeal. The right of appeal should be exercised responsibly and with caution and the costs regime is there to impose discipline.

The response on behalf of Mr Dermott Barrett

4. The appellant's agent's response to the costs applications was made orally at the hearing, albeit against the background of the initial grounds and facts which explained that due to COVID-19, the appellant's agent had been unable to meet with the appellant or visit the site before the appeals were submitted. Against that background, the essence of the response to the applications is as follows:
 - It had been hoped that the appeals would be put into abeyance. Considerable time had been spent with the Council agreeing that other

appeals concerning 'Greenacres' and 'The Stables' should be held in abeyance, whilst a planning application is considered, to avoid a two week inquiry. These appeals have been treated very differently and it is surprising that the Council is seeking costs when the appellant's agent has sought to save the Council costs on the other appeals and has sought to mediate.

- The appellant had agreed to remedy the breaches. Even before the enforcement notices were issued, an offer had been made to meet the Council to discuss matters, but this never happened, save that a meeting did take place without the appellant's agent, and matters were not resolved.
- Over the last couple of years, the appellant's agent and a family member have suffered a great deal of ill health as well as an accident in July of this year. This has necessitated investigations and operations and there has been the COVID-19 pandemic to contend with, which made it difficult to take instructions.
- In all these circumstances, the appeals may not have been handled as well as they could have been. Greater attention could have been paid to the appeals since July 2021, but the appellant's agent was dealing with the effects of an accident and other serious health issues. He did the best he could in the circumstances and in the time available to him.
- When the pre-hearing note indicated that the withdrawal of some grounds might be considered, they were withdrawn in an effort to be helpful.

Reasons

5. The Planning Practice Guidance (PPG) indicates that costs may be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. I acknowledge that the difficulty in taking full instructions in the context of the COVID-19 pandemic and its impact on individuals involved will have made it difficult to submit fully considered appeals in the first instance. However, as far as ground (d) of appeal A and grounds (c), (d) and (e) of appeal B are concerned, there was never any basis for these. It was not necessary to cite those grounds to establish a 'holding position', and it was unreasonable to pursue them at any stage. Ultimately, this was recognised when those grounds were withdrawn following my pre-hearing note of 24 August 2021.
7. It is apparent from Mr Hughes' statement on behalf of the Council that there was not a great deal of work involved in responding to grounds (c), (d) and (e). Nevertheless, the Council is entitled to recover the full costs incurred in doing so.
8. As far as grounds (a), (f) and (g) are concerned, the merits of these depended on a detailed understanding of the site and the occupants. Given the difficulties in the appellant's agent taking detailed instructions, and in the appellant receiving full advice, I am not persuaded that it was unreasonable for the appeals to be submitted on these grounds, to preserve the appellant's position. However, whilst the appellant had hoped that these appeals would be held in abeyance, this was not agreed, and I have seen nothing to indicate that they should have been. The circumstances were quite different to those relating to other nearby sites where, among other things a new planning application was

- under consideration. When it became clear that these appeals would proceed to a hearing, the appellant should have reviewed the position.
9. In any event, a crucial factor in my dismissal of both appeals A and B, was the indication in the appellant's statement of 11 March 2021 that, *"The site residents don't live on the disputed part of the site, and so the impact on them is unlikely to be significant, although there could be some knock on effects."* It should have been apparent at that point that there was little basis for the appeals on ground (a), given that very special circumstances were required to justify what was accepted as being inappropriate development in the GB, which conflicted with the development plan, and reliance had been placed on the impact on occupiers of the site.
 10. From what was said at the hearing, the so-called *"knock on effects"* related to how other applications and appeals might be determined, including the question of how the need for, and supply of gypsy and traveller sites might be approached. However, if these appeals had been withdrawn at that point there would have been no findings which could have had a knock on effect. Furthermore, the appellant's contentions in relation to need and supply were further affected by the adoption of the new local plan on 22 July 2021, though the appellant does not seem to have assessed this. Given that there appeared to be no basis for ground (a), and the 21 March 2021 statement did not even refer to ground (f) and (g), which I ultimately decided should fail, the appeals should have been entirely withdrawn at that point.
 11. However, the PPG makes clear that I have discretion when deciding on awards of costs, and I may take account of extenuating circumstances. In this case, COVID-19 had a significant effect, including on key participants, and the appellant's agent and a family member have suffered from serious health issues. This had an impact throughout the months preceding and following March 2021 and I do not doubt it hindered the proper consideration and prosecution of the appeals. That said, as well as gently prompting the withdrawal of grounds (c), (d) and (e), my pre-hearing note of 24 August 2021 drew attention to the implications of the appellant's statement that site residents did not live on the disputed part of the site.
 12. As the case Officer was away, the parties did not actually receive my pre-hearing note until 1 September, just 6 days before the hearing. Nevertheless, there was still time to withdraw the appeals, avoiding the cost of finally preparing for and attending the hearing, and the site visit on 7 and 8 September respectively. In all the circumstances, and notwithstanding the extenuating circumstances, it was unreasonable not to withdraw the appeals at that point and the Council incurred unnecessary expense as a result.

Conclusion

13. No evidence was submitted in support of grounds (c), (d) and (e). They never had any reasonable prospect of success and it was unreasonable to pursue them. The Council is entitled to recover its full costs incurred in responding to those appeals, albeit that those costs may be limited. Having regard to all extenuating circumstances, the failure to withdraw the remaining grounds of appeal, following receipt of my pre-hearing note on 1 September 2021, was also unreasonable behaviour. Following that, the Council incurred costs unnecessarily and it is entitled to recover them. On this basis, partial awards of costs are justified on both applications.

Costs Orders

14. 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 Mr Dermott Barrett shall pay to Central Bedfordshire Council:
- (i) the costs of the appeal proceedings Ref APP/P0240/C/20/3262339 described in the heading of this decision limited to the costs incurred in responding to ground (d) throughout the appeal, and all the costs of the appeal proceedings incurred after 1 September 2021; such costs to be assessed in the Senior Courts Costs Office if not agreed; and
 - (ii) the costs of the appeal proceedings Ref APP/P0240/C/20/3262343 described in the heading of this decision limited to the costs incurred in responding to grounds (c), (d) and (e) throughout the appeal, and all the costs of the appeal proceedings incurred after 1 September 2021; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Mr Dermott Barrett, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J A Murray

INSPECTOR