



Costs Decision

Hearing held on 4 March 2025

Site visit made on 5 March 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 27 March 2025

Costs application in relation to Appeal Ref: APP/P0240/W/23/3336017

Plot 6 The Evergreens, Dunstable Road, Tilsworth, Leighton Buzzard, LU7 9PU

- 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 Patrick Gammell for a full award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal to grant planning permission for five additional caravans for Romani Gypsy families on an existing Gypsy site. The site is laid out to six separate sections and permission is for an additional static caravan on three of the existing pitches and two caravans (one static) on the land at the top of the site. The new pitch to contain one static caravan, one touring caravan and parking for two vehicles with associated hard standing and water treatment plant without complying with a condition attached to planning permission Ref CB/13/03217/FULL, dated 11 November 2013.
 - The condition in dispute is No 3 which states that: The occupation of plots 1,2 and 4 and plot 6 hereby permitted shall be carried on only by the following and their resident dependants: Alby Smith & Joyce Smith, Albert Smith & Claire Smith and Maurice Hughes & Catrina Hughes on plots 1,2 and 4. Sam Smith and Noreen Smith on plot 6.
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Decision

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

Preliminary Matters

2. An application for costs was made at the hearing. However, it was agreed that this would follow a written representations process with the application for costs and responses provided within an agreed timetable.

Reasons

3. 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.
4. The appellant submits that the Council's actions amount to unreasonable behaviour by preventing or delaying development that should clearly be permitted and acting contrary to, or not following, well-established case law¹.
5. The appellant contends that the Council failed to take account of the 2013 permission as the lawful use of the site/plot, which in turn resulted in their erroneous conclusion that the development was inappropriate development in the Green Belt and harmful to the purposes of the Green Belt. Furthermore, even if the

¹ Planning Practice Guidance Paragraph :049 Reference ID: 16-049-20140306

proposal was inappropriate development, the Council failed to take into account a number of other considerations which were set out in the appellant's planning statement which favoured a grant of permission. He believes any reasonable authority would not have refused the application, and an appeal would not have been necessary, nor the costs incurred in making the appeal.

6. In response the Council consider that they clearly set out their reasons for refusal having regard to the planning circumstances of the original planning permission and considering the information submitted in support of the planning application at appeal. At the time of their decision, the Council believed they had a five year supply of Gypsy and traveller sites and did not consider that other considerations put forward outweighed the harm to the Green Belt and other harm identified. They supported their decision at appeal with a Statement of Case. When the December 2024 changes to the NPPF and PPTS were made, the Council advise that they reviewed their case and notified the Planning Inspectorate and the appellant that they no longer intended to defend the appeal. Such actions in the Council's view were undertaken promptly and saved all parties time and expense in preparing for and attending the conjoined Hearing.
7. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably defending appeals. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; imposing a condition which is not necessary....².
8. The reasons stated on the Council's decision for refusing the application related to their belief that the proposal would be inappropriate development in the Green Belt. The Council also stated reasons relating to the carrying out of unintentional unauthorised development; being able to comfortably demonstrate a five year supply of Gypsy and traveller pitches within the District, and stated that they were not aware of any other considerations, including personal circumstances that would demonstrate that special circumstances exist to justify the variation of Condition 3 to remove or vary the named persons for occupancy of Plot 6.
9. It can be seen from my decision that when determining an application to vary or remove a condition on a planning permission, consideration should be given as to whether that condition is still necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects.
10. In this case the reason for Condition 3, which grants a personal permission, was in recognition of the site's location in the Green Belt, the original development being inappropriate development, but accepting at that time that "very special circumstances" had been demonstrated, including the personal circumstances of the named occupiers. Thus, it seems to me that when the Council considered the application to vary/remove the condition, they needed to determine whether the development the subject of the original consent would still be inappropriate development in the Green Belt, and if so, were there other considerations that would amount to the very special circumstances necessary to outweigh the substantial harm to the Green Belt which would justify the removal of the personal

² PPG: Paragraph:048 Reference ID:16-048-20140306

condition for Plot 6, or to vary it to allow the appellant and his wife to occupy the site.

11. I have had regard to the Planning Officers Report (OR) in relation to the planning application at appeal, the Council's Statement of Case and subsequent correspondence, including a Supplementary Statement of Case submitted in response to the December 2024 changes to the NPPF and PPTS.
12. The OR sets out clearly the appeal site history and development plan/ national policy considerations, both at the time of the original 2013 permission and at the time the Council was determining the application the subject of appeal. The Council considered that for reasons relating to the appeal site's location within the Green Belt that the development proposed would still amount to inappropriate development and thus other considerations would need to be considered and a determination made as to whether those considerations would be sufficient to justify either the removal of Condition 3 or to vary it to allow the appellant to occupy Plot 6. Those other considerations, including the information they had at that time of Mr Gammell's personal circumstances, his Gypsy and traveller status, the Council need and supply position in relation to Gypsy and Traveller pitches, including lack of availability of other accommodation were all considered by the Council and a planning balance undertaken. It was the Council's decision to refuse the application.
13. The reasons for their refusal were set out clearly in both the OR and the decision notice. The decision also states the policies of the development plan which the Council considered to be relevant, as well as those within the NPPF. Furthermore, the Council supported their decision with a statement, including a statement from Opinion Research Services in relation to the accommodation needs for Gypsy and Travellers in Central Bedfordshire. That statement included a response to the changes made to the PPTS definition of Gypsies and Travellers in December 2023 in response to the outcome of the Lisa Smith Judgement.
14. In December 2024 further changes were made to the PPTS and the NPPF. The Council were given an opportunity to respond and comment on those changes by the Planning Inspectorate. At that time the Council reviewed their position and advised that as of December 2024 they could no longer demonstrate a five-year supply of Gypsy and traveller pitches. They advised the Inspectorate that they no longer invited the Inspector to dismiss the appeal.
15. It will be seen from my decision that I allowed the appeal, having regard to the changes to the NPPF (December 2024) in relation to the Green Belt, and to the PPTS, including the Council's acknowledgement that at this time they cannot demonstrate a five-year supply of Gypsy and Traveller sites. However, the Council's decision in 2023 to refuse the application was a matter of judgement. I recognise that when the Council considered the application at appeal, the use of the site for Gypsy and travellers was lawful, however, the determination to be made was whether Condition 3 remained necessary and reasonable, should be removed or varied. I am satisfied that the Council adequately substantiated their reason for refusal initially at appeal and reviewed their case promptly when planning circumstances changed. In this case the appeal could not therefore have been avoided.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated.

Elizabeth Pleasant

INSPECTOR