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## Costs Decisions

Hearing held on 11 March 2025

Site visit made on 11 March 2025

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

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**Land at Eden Top, Sheppey Way, Bobbing, Sittingbourne, Kent, ME9 8QP**

### **Costs application in relation to Appeal Ref: APP/V2255/W/24/3357886**

- 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 Robert Beck for a full or in the alternative a partial award of costs against Swale Borough Council.
  - The appeal was against the refusal of planning permission for Removal of conditions 3 (occupancy restriction) and 4 (use of land) pursuant to application SW/09/0972 (allowed on appeal) for the material change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static), erection of amenity block and laying of hardstanding.
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### **Costs application in relation to Appeal Ref: APP/V2255/C/24/3352254**

- 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 Mr Robert Beck for a partial award of costs against Swale Borough Council.
  - The appeal was against an enforcement notice alleging: The unauthorised change of use of the Land from agricultural to the stationing of a mobile home for residential use including the laying of hardstanding.
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## **DECISIONS**

### **Appeal Ref: APP/V2255/W/24/3357886**

1. The application for an award of costs is refused.
2. **Appeal Ref: APP/V2255/C/24/3352254**
3. The application for an award of costs is refused.

## **REASONS**

4. The costs applications, response and final comments were made orally at the hearing.

### **The submissions for Mr Robert Beck**

5. The refusal of permission was unreasonable and prevented or delayed development that should have been permitted. The Council failed to take account

of the existing permission and treated the proposal as an application for a new permission. The Council also failed to take account of significant changes since 2011 and other material considerations. There was an assumption that because the Inspector imposed a personal condition in 2011 the condition should be kept, rather than focus on the situation as of today. A full award is sought but this is tempered by the outcome on the second costs application.

6. The second costs application relates to both appeals. No case is made that the Council should not have issued an enforcement notice. However, there was a change of national policy in December 2024 and the absence of a five year supply of traveller sites now results in the application of the tilted balance. The Council accepted a presumption in favour of sustainable development applied when they wrote their statement. At that point the Council should have reviewed their case and should have either withdrawn the enforcement notice or not opposed a grant of permission, so there would have been no need to attend the hearing.
7. In summary, the costs of attending the hearing are sought on the enforcement appeal. Full costs are sought on the section 78 appeal except if the review point is not accepted the costs award should be reduced accordingly. The extent of the costs award rests on whether there was a need to attend the hearing.
8. Turning to the response by the Council, the absence of a planning application did not justify issuing or maintaining an enforcement notice. A Council will often withdraw a notice through the process of negotiation. Options were open to the Council, including withdrawing opposition to a grant of planning permission.
9. The Council's cases failed to demonstrate a balance of considerations or that the tilted balance was applied.

### **The response by Swale Borough Council**

10. On the first costs application, it was open to the decision maker to refuse the application as long as they had valid planning grounds to do so. The reason for refusal on the decision notice was complete, precise and specific. The reasons were substantiated in the appeal statement. The Council considered the benefits against the identified harms and came to an on balance conclusion.
11. In terms of the joint costs application, based on a review of the case, unmet need and a lack of supply were fully taken into account as part of ongoing case management. The enforcement notice was not withdrawn because the only way to control the development was through the enforcement notice – there was no planning appeal. The Council statements took account of need and supply and balanced these matters against the harm. The Council did not act unreasonably. The overall balance was for the decision maker and valid planning grounds for pursuing a case were presented on both appeals.

### **Planning Practice Guidance**

12. 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.
13. Of particular relevance to these costs applications, 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 refusing planning applications, or by unreasonably defending appeals. One example refers to a local planning authority not reviewing their case promptly following the lodging of an appeal against refusal of an application to remove or vary one or more conditions, as part of sensible on-going case management.

### **The Conditions Appeal**

14. The planning application was made on 9 August 2022, initially for removal of condition 3 only and then later amended to include condition 4 following correspondence with the Council. The application was supported by a short planning statement dated November 2022 that presented a case focusing on the general need for traveller sites. The reasons for imposing the conditions through the appeal decision were not addressed in any detail, nor was information provided about any change in personal circumstances.
15. The application was determined and refused by the local planning authority on 2 August 2024 (against officer recommendation). The Minutes of the Committee meeting indicates full consideration of the application and that in coming to a decision the Inspector's reasoning and conclusions leading to the personal permission in 2011 were given substantial weight. Based on the Inspector's reasoning for imposing conditions 3 and 4 there was an expectation that once the personal tie was broken the use of the site would cease and all of the development would go. There was reluctance to act contrary to an Inspector's decision. This approach and decision were reasonable in the circumstances.
16. The appeal was made on 19 December 2024, very shortly after the publication of the revised National Planning Policy Framework and Planning policy for traveller sites on 12 December 2024. The appellant requested a hearing and that the appeal be linked to the appeal against the enforcement notice. The conditions appeal was supported by a full statement of case that substantially expanded on the case presented with the application and the material before the Council when the application was determined. On 20 January 2025 the Planning Inspectorate confirmed the appeal was valid, that it would be linked with the enforcement appeal and would be heard on 11 March.
17. The Council's appeal statement acknowledged the assessment of the proposed removal of conditions turned on the balance applied through paragraph 11(d) of the Framework as a result of the revisions to national policy. The reasons for refusing the application were explained and a balanced judgement made. The question of weight is for the decision-maker. The Council followed best practice in the PPG in that they reviewed their case after the appeal was made and took account of a change in policy. The fact that I came to a different conclusion to the Council is not sufficient reason to award costs, in view of a well-established principle of the costs regime that an award of costs does not necessarily follow the outcome of an appeal.

### **Conclusion**

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

## **The Enforcement Appeal**

19. The application for a partial award of costs relates to the behaviour of the Council after the publication of the revised National Planning Policy Framework and Planning policy for traveller sites on 12 December 2024.
20. In May 2024 the Council decided the taking of enforcement action against the unauthorised development was expedient and the notice was issued on 19 August 2024. The appeal was made on 20 September 2024 and a hearing requested. The appellant accepted unauthorised development had taken place and sought planning permission through the deemed planning application. In the circumstances the Council could not reasonably be expected to withdraw the enforcement notice, all matters considered.
21. The second option put forward by the appellant was for the Council to withdraw their case on the ground (a) appeal and not to oppose the grant of permission. The Council balanced the factors weighing for and against the development and concluded, as a matter of planning judgement that the identified harm to the local area was not outweighed by the benefits. That was a reasonable conclusion to reach.
22. Even if the Council had decided not to oppose a grant of permission, the hearing still would have taken place. A change to the procedure is a matter for the appointed Inspector to decide. The appeal was made on grounds (b), (f) and (g) as well as ground (a). Discussion on the ground (b) appeal and the enforcement notice was necessary. There also were matters in the ground (a) appeal that were clarified at the hearing, including application of development plan policy and the effects on the Special Protection Areas and Ramsar sites. The necessary contribution towards mitigation was not confirmed until the morning of the hearing. An agreed list of planning conditions did not form part of the statement of common ground.

### Conclusion

23. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Diane Lewis*

Inspector