
Costs Decision

Hearing held on 22 May 2025

Site visit made on 22 May 2025

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2025

Costs application in relation to Appeal Ref: APP/E3715/W/25/3359149 Land Adjacent To Greenacres, Top Road, Barnacle, Warwickshire CV7 9FS

- 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 Gaskin for a partial award of costs against Rugby Borough Council.
 - The appeal was against the refusal of planning permission for change of use of land to a residential caravan site consisting of 3 no. pitches, including the demolition of existing stables buildings.
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Decision

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

Preliminary Matter

2. The costs application was submitted in writing at the hearing although added to verbally by the applicant's agent. The Council's response to the application and the applicant's final comments were made verbally at the hearing. This decision letter sets out a summary of the submissions.

The submissions of Mr Gaskin

3. Reference is made to the Planning Practice Guidance (PPG) and the advice on costs awards. This states that local planning authorities are at risk of an award of costs by unreasonably defending appeals. Reference is made to examples of unreasonable behaviour as set out in the PPG.
4. The Council has not provided a statement of case that responds to the applicant's hearing statement and so it has failed to produce evidence to substantiate its refusal reasons. Also, it is unreasonable to rely on extemporaneous submissions on the day of the hearing as it provides no opportunity for the appellant to prepare or to address the Council's case.
5. The Council officer's report does not address the amended versions of the National Planning Policy Framework (the Framework) and the government's Planning Policy for Traveller Sites (PPTS) that were issued after the Council's decision to refuse planning permission. The applicant is unaware of the Council's case in light of the changes in national policy, particularly on the issue as to whether the proposal would represent inappropriate development in the Green Belt. The failure to comply with appeal rules means the Council has unreasonably defended the appeal. Also, the Council has in effect refused to enter into discussions when a more helpful approach would have resulted in the appeal being avoided or the narrowing of the issues being considered. This behaviour amounts to the Council not reviewing its case promptly as part of sensible on-going case management.

6. As background, the applicant asked the Planning Inspectorate (PINS) by email dated 23 April 2025 if the Council had provided a hearing statement. On the same day PINS replied to say a Council statement had not been submitted. At this time, the applicant's agent expressed the unreasonableness of this failure as it frustrates their ability to prepare for the hearing and to complete a statement of common ground (SOCG). Also, the applicant's agent highlighted the parts of the PPG on costs on which this application relies and explained why it is considered the Council had acted unreasonably. The application seeks a partial award of costs based on the actions from 23 April 2025.

The response from Rugby Borough Council

7. The email from the applicant's agent dated 21 May 2025 states the applicant is considering an application for costs. However, it also says that costs would not be sought if the Council agreed the proposal would not be inappropriate development in the Green Belt having regard to paragraph 154(g) of the Framework. The threshold for an award of costs is unreasonableness, not a different opinion or judgement.
8. Firstly, there is the issue as to whether the Council has prevented development that clearly should have been permitted. There has been extensive debate at the hearing as to whether planning permission might be granted through different routes. Each of these routes requires a planning judgement and different opinions have been expressed. Nothing has been submitted that lies outside the bounds of reasonableness. Changes to the Framework and the PPTS do not automatically lead to a conclusion that planning permission must be granted. There is nothing wrong with the applicant's agent advancing a case for granting planning permission but the Council disagreeing with the submissions is well within the bounds of reasonableness.
9. Secondly, the Council has not failed to produce evidence as the 2 refusal reasons are plainly relevant to the consideration of the appeal. The changes in national policy cut across both refusal reasons and the Inspector may disagree with the conclusions reached by the Council. However, this does not mean the Council has failed to substantiate the refusal reasons.
10. Thirdly, there is a concern over whether the Council has refused to enter into pre-application discussions. This is not relevant. However, the submissions on this matter may also relate to the absence of a Council's hearing statement and the failure to complete a statement of common ground.
11. The Council confirmed via email to the applicant's agent dated 23 April 2025 that it was relying upon the Council officer's report. By this stage, the Inspector had issued an agenda for the hearing that included an item on the implications of the revised national planning policy. The Council sought advice from PINS asking whether or not the Inspector wished the Council to submit a hearing statement. The response was that the deadline for the submission of a statement had passed and that it was not a requirement but up to the local authority to decide on whether a statement is needed. In light of this advice, the Council considered the most efficient way to deal with the issue was through the progress of the SOCG. It was intended to submit this before the hearing. The applicant would have been aware of the Council's views on matters through the preparation work on the SOCG.

12. The Council sought a simplistic structure to the SOCG with matters of agreement and disagreement. Unfortunately, the approach taken by the applicant's agent was to consistently remove any text relating to the Council's position simply leaving in the applicant's views. However, the Council did repeatedly seek to narrow the issues for consideration but this did not come to fruition. That said, there are no matters which the costs application identify as having been unnecessary to the Inspector's consideration of the appeal. Different views have been expressed and these demonstrate the appeal was necessary.
13. Fourthly, the Council has sought through the preparation work on the SOCG to explain its position as regards the new considerations brought in by policy changes. The 2 refusal reasons remain relevant in terms of at least one of the routes by which the Inspector will determine the appeal.
14. Finally, the application alleges the Council has unreasonably defended the appeal given the policy changes. This allegation wrongly proceeds on the basis that policy changes mean the appeal must be allowed. The Council has behaved reasonably in conduct and approach to the appeal and there is no basis for a costs award.

Final submissions of Mr Gaskin

15. The Council's failure to produce evidence to substantiate the refusal reasons given the changes to national planning policy amounts to unreasonable behaviour. This has unnecessarily lengthened the preparation for the hearing and its duration.

Reasons

16. Parties in planning appeals normally meet their own expenses. However, the 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.
17. In response to the appeal, the Council has provided its decision notice on the planning application that sets out 2 refusal reasons with reference to development plan policies and national planning policy. It has also provided a copy of relevant policies as well as an officer's report on the planning application that explains in detail its concerns with the proposal. Council representatives at the hearing also provided verbal evidence in support of its objections. All of these actions demonstrate the Council has produced evidence to substantiate its refusal reasons.
18. My appeal decision explains why I consider the proposal would be acceptable, particularly in terms of Green Belt policy and the location of the development site. However, my decision relies upon issues such as whether the site includes previously developed land, whether the proposal would cause substantial harm to openness and whether the development would provide good access to services. I disagree with at least some of the Council's submissions on these points but its contentions are reasonable as they are all matters of planning judgement. Therefore, I find the Council has not prevented development that clearly should have been permitted in light of national planning policy.
19. The Council failed to submit a statement of case. Instead, an email from the Council's officer explains their case relies upon the report on the original planning application. I can understand the applicant's frustration with this approach as the officer's report was prepared prior to the publication of the revised Framework and

PPTS. As such, it fails to confirm the Council's stance in light of up-to-date national planning policy.

20. However, it would seem from the evidence before me that there was an on-going dialogue or correspondence between the main parties relating to the production of the SOCG. I am satisfied that through this process the Council has carried out a review of its position in respect of the proposed development and informed the applicant of its views. Moreover, the applicant has had an appropriate opportunity to respond to the Council's contentions through the discussion at the hearing.
21. Furthermore, it was apparent at the hearing that the Council still considers the proposal would be unacceptable when considered against Green Belt policy and having regard to accessibility to services. These concerns were expressed in full knowledge of the applicant's submissions and the recent versions of the Framework and the PPTS. Given this context, I am unconvinced the issues to be discussed at the hearing could have been narrowed any further through the Council reviewing its position. As such, the appeal has been necessary despite the changes in national planning policy and the hearing was not unduly lengthy as a result of any unreasonable behaviour from the Council.
22. For the above reasons, I find no unreasonable behaviour by the Council that has led to the applicant incurring unnecessary or wasted expense in the appeal process. Therefore, I conclude an award of costs is not justified.

Jonathan Edwards

INSPECTOR