



Costs Decision

Hearing held on 1 July 2025

Site visit made on 1 July 2025

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2025

Costs application in relation to Appeal Ref: APP/G1630/W/25/3361517

Wexford Park, Cold Pool Lane, Badgeworth, Cheltenham GL51 4UP

- 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 Ms Theresa Smith for a partial award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of planning permission for “proposed change of use of land to a private Gypsy and Traveller site consisting of 1 pitch of 1x Mobile Home, 1 x Touring Caravan, 1 x dayroom, access and ancillary hardstanding” (description taken from the Council’s decision notice).
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Decision

1. The application for an award of partial costs is allowed in the terms set out below.

Preliminary Matter

2. The application, the Council’s response and final comments from the applicant’s agent were all made verbally at the hearing.

Reasons

The submissions for Ms Theresa Smith

3. An award of costs may be allowed where an application is timely, where the party against who the application has been made has acted unreasonably and the unreasonable behaviour has resulted in unnecessary costs to the applicant. This application seeks an award to cover the costs of attending the hearing.
4. Local planning authorities are expected to keep their position under review once an appeal is lodged. The Council in this case did to an extent review its position as it withdrew its objections to the proposal on Green Belt grounds and on drainage and flood risk issues. However, it did not accept that planning permission should be granted as has come out at the hearing. The Council accepted that the tilted balance did apply but not that planning permission should be granted. If the Council had been explicit before that it considers permission should be granted then the hearing would not have been needed. The Council suggested the appeal could have been dealt with through the written representations process but it still maintained its reason for refusal on character and appearance and it did not indicate the development should be permitted. The appellant did not oppose the written representation procedure but the Inspector decided a hearing was needed in the context of the Council not saying that the appeal should be allowed. If the Council had been clear on the change in its view then the hearing costs would have been saved.

The Response for Tewkesbury Borough Council

5. The application is disappointing as the Council has acted positively and immediately to review its case in light of the changing planning policy context. Also, Council officers have engaged with the appellant and worked in a positive and proactive manner. The Council has also asked the appellant to see whether there were any additional very special circumstances to be put forward. The Council asked the appellant to entertain a change in procedure to written representations. Had the point been put to the Council as it has been at the hearing in terms of whether it would now grant planning permission then it would have been prepared to confirm its stance. The Council wrote to the Planning Inspectorate for the procedure to be changed and the appellant was reserved on the matter. The points made in the costs application could have been avoided if the question put to the Council officers today had been asked of the Council previously.

Final Submissions for Ms Theresa Smith

6. The appellant did not oppose the written representations procedure. It is not for the appellant nor the Inspector to question the Council's stance on the appeal throughout the appeal process. The Council withdrew 2 of its refusal reasons but it still objected to the proposal on character and appearance grounds and so it is fair to assume that it still opposed the appeal. It is incumbent on the Council to tell the Inspector and the appellant if that is not the case. This is a fundamental issue and the Council should not be waiting to be asked whether it considers the appeal should be allowed.

Reasons

7. 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.
8. The Council refused planning permission for 3 reasons that in essence relate to Green Belt, drainage and the effect on the character and appearance of the landscape. After the Council issued its decision, revised versions of the National Planning Policy Framework (the Framework) and the government's Planning Policy for Traveller Sites (PPTS) were issued. The Council's written statement in response to the appeal explains it would no longer be pursuing the Green Belt refusal reason in the light of the revised policy context. Also, the written statement confirmed the Council would no longer pursue its refusal reason on drainage and flooding following receipt of a foul and surface water drainage report. This shows the Council did indeed review its stance on these issues following the appeal.
9. However, the Council's written statement maintains and indeed explains in more detail its concerns in respect of the proposal's effects on the character and appearance of the area. It is clear the Council considers the proposal would fail to protect landscape character for its intrinsic beauty and so it would be contrary to development plan policies as well as elements of the Framework and the PPTS.
10. At the hearing, the Council's representatives reiterated its concerns over the effects of the development on the character and appearance of the area through responses to my questions. They also confirmed the Council no longer pursued the initial Green Belt and drainage refusal reasons. In addition, the officers accepted

the Council was unable to demonstrate a 5 year supply of deliverable Gypsy and Traveller sites. The Council acknowledges within its written statement that paragraph 11(d) of the Framework and the so-called tilted balance applies as a consequence.

11. In response to my questions at the hearing on the issue of planning balance, the Council officers suggested that limited weight should be attached to any harm that would be caused by the proposal to the visual qualities of the countryside and any conflict with sub-paragraph 187(b) of the Framework. They also acknowledged that the proposal would be supported by the provisions of paragraph 61 of the Framework and that moderate weight should be given to the benefits of the scheme in terms of providing land for homes to accommodate specific groups. The Council officers then went on to express their view that planning permission should be granted given the provisions of paragraph 11(d) of the Framework and as the harm caused by the proposal would not significantly and demonstrably outweigh the benefits of the development. Finally, the officers confirmed the Council would now grant planning permission for the development and they advised the appeal should be allowed.
12. The PPG states that a local planning authority is at risk of an award of costs if it does not review its case promptly following the lodging of an appeal. To my mind, this obligation must also mean advising the Planning Inspector, the appellant and any interested parties of any change in its position as quickly as possible, particularly if a Council decides it no longer resist planning permission being granted on appeal. It is not the responsibility of the appellant nor an Inspector to seek confirmation from a Council on its position as an appeal progresses, particularly on the fundamental issue as to whether a local authority no longer considers planning permission should be refused.
13. In its response to this costs application, the Council's representatives did not identify any verbal comment made at the hearing that would justify a change in view over the weight to be attributed to the harm caused by the development and to its benefits. Therefore, I fail to understand why the Council did not raise its view that the appeal should be allowed prior to the hearing. From its written statement, it is clear the Council understood paragraph 11(d) and sub-paragraph 11(d)(ii) of the Framework would be applicable in the determination of the appeal. However, it would seem the Council did not at the point of preparing the written statement go on to review the proposal in light of the tilted balance. If indeed the Council did carry out such a review, it did not advise of its revised position until towards the end of the hearing. In either case, the Council has acted unreasonably.
14. The decision to proceed with the appeal hearing was mainly based on the fact the Council still objected to the proposed development on landscape grounds. Neither the Council's written statement of case nor the statement of common ground indicate the view expressed at the hearing by the Council officers that planning permission should be granted. If the written submissions had been clear on this point then there would have been no need to test the written evidence through questioning at a hearing. As such, the hearing could have been avoided.
15. Therefore, the Council's unreasonable behaviour in either not promptly and fully reviewing its position or not quickly alerting the parties to the appeal to a fundamental change in its view on the proposal has resulted in the appellant incurring unnecessary expense. A partial award of costs is justified to cover the

expense incurred by the appellant and those in support of their case by attending the hearing and giving evidence. It should be noted that the award of costs does not cover the attendance at the site visit that occurred after the hearing as this would have been required even if the appeal were dealt with by the written representations procedure.

Costs Order

16. 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 Tewkesbury Borough Council shall pay to Ms Theresa Smith, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by the applicant and those in support of the applicant in attending the hearing and giving evidence at the hearing held on 1 July 2025 but excluding any costs associated with the Inspector's site visit following the hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Edwards

INSPECTOR