Planning Inspectorate

Costs Decision

Hearing held on 29 July 2025

Site visit made on 30 July 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2025

Appeal Ref: APP/T3725/W/24/3356326
Land north of Henley Road, Budbrooke, Warwick, Warwickshire CV35 8RA

- 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 Warwick District Council for a full or partial award of costs against Mr Leslie Smith.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use of land to use as residential caravan site for 12 gypsy/traveller families.

Decision

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

Submissions by the Council and the response by Mr Smith (the appellant)

The submissions for the Council (made in writing)

2. The only reason an appeal situation exists is due to the appellant submitting an appeal against non-determination of the planning application. The sole reason why the Council had not made its decision was owing to the lack of the supporting information necessary to make a complete and thorough assessment of the development.

3. The application was submitted and deemed valid on 28 May 2024. On 9 July 2024 shortly after the end of the statutory consultation period the Council provided the appellant with a comprehensive update including a summary of technical objections and the additional information required for it to be able to properly assess the application.

4. The majority of the information requested was not provided or there was no response to the Council's emails to the appellant. The Council provided a timeline of its correspondence with the appellant.

5. The non-determination of the planning application was influenced by the Council's reluctance to simply issue a refusal on the basis of a lack of information. It attempted to work with the appellant and agreed extensions of time on more than one occasion.

6. A Stage 1 Road Safety Audit (RSA) was provided by the appellant on 14 January 2025 having been requested on 20 June 2024. The submission date of the RSA was the day before the original deadline provided by the Planning Inspectorate for the submission of a Statement of Case (SoC). It was accordingly

not possible for the Council to consider the additional information in consultation with the Highways Authority and reflect any updated position in the SoC.

7. Further information in relation to highway safety was provided between January and March 2025, the latest submission being 11 March 2025. Had this been submitted earlier, the unnecessary delays and numerous consultations with the Highway Authority could have been avoided.

8. Earlier submission of this information could have resulted in this aspect of the development being found to be acceptable either before the appeal was submitted or before the Council's first SoC was due.

9. Some information in relation to flood risk and drainage objections, in the form of a Percolation Test was submitted on 27 January 2025. The Lead Local Flood Authority (LLFA) had first requested a Flood Risk Assessment and Surface Water Drainage Strategy (FRA) to comply with the requirements of the Framework in June 2024, but this was not provided until 12 June 2025.

10. The LLFA has provided three consultation responses, two of which post-date the submission of the appeal. Only the last one on 25 June 2025 was able to provide a substantive response.

11. Had the required information been forthcoming earlier, and ideally during the course of the planning application, the unnecessary delays and several re-consultations with the LLFA could have been avoided.

12. Had the FRA been submitted earlier this would have avoided the Council having to re-consider its position so close to the date of the Hearing. One of the primary reasons for doing so being linked to the FRA and whether recommended conditions by the LLFA were appropriate.

13. The EN was served in July 2024 and the appeal made on grounds (a) and (g).

14. The Planning Inspectorate took the decision in October 2024 to take no further action on the ground (a) appeal and focus on the ground (g) only. Whilst that decision did not come until October 2024, it was always unreasonable to appeal against ground (a) while a planning application was still being considered by the Council, the submission of which pre-dates the EN being served.

15. There was no good reason why the planning application could not have been progressed and relevant information submitted between the months of July and November 2024. Had the information been forthcoming, either at the application stage or earlier in the appeal process, it would not have been necessary to continue to review, reflect on and reconsider the Council's position so close to the date for the Hearing.

16. The deadline for the Statement of Common Ground (SOCG) imposed by the Planning Inspectorate was 22 July 2025. The Council requested sight of an updated SOCG from the appellant just prior to the deadline. The originally submitted SOCG was dated November 2024.

17. At the time of preparing this application for costs the Council had not had sight of an updated SOCG and has been unable to agree or otherwise the updated contents which should reflect not only the latest position between the parties but also the revisions to the Framework.

18. As a consequence of the lack of an updated and agreed SOCG, having had to continually review its position the Council felt it necessary to provide an Addendum to its Statement of Case (the SoC Addendum) which was submitted on 8 July 2025. This was both in lieu of a SOCG and an officer/Committee report as the Council never had the opportunity to prepare one before the appeal against non-determination was made.

19. An updated SOCG was submitted by the appellant over the weekend before the Hearing. It did not reflect the latest position set out in the SoC Addendum and the Council set out its recommended amendments.

20. The appellant has acted unreasonably having regard to the examples set out in Planning Practice Guidance and costs to the Council have been incurred unnecessarily.

21. The headlines are that the Council was ‘drip fed’ information. The FRA was submitted in June 2025 having been requested in June 2024. The Council could have rejected the application but was trying to be reasonable, hence the agreed extensions of time but nothing happened to progress the application. Submitting the required information significantly earlier could have avoided the appeal altogether.

22. A full award of costs is justified but if it is found not to be then a partial award is fully justified in respect of the matters raised in the application for costs.

<u>The response on behalf of Mr Smith (made orally at the Hearing)</u>

23. That the appeal could have been avoided is not the case. The application was made before the revisions to the Framework and a very special circumstances test would have been made. We are now dealing with grey belt, and it is a different situation than had the application been determined in 2024.

24. Additional matters to be addressed have been addressed but not as quickly as I would have liked. This does not amount to unreasonable behaviour.

25. Most importantly the Council ‘threw’ an EN into the equation. The EN does not appear on the Council’s timeline. The appeal against the EN needed to be made before the notice took effect. A ground (a) appeal was made but the appellant was informed that he could not do so. He was in a position where he had no option than to protect his interests and the appeal against non-determination was made.

26. The Council’s argument regarding being put to additional expense as a result of the drip feeding of information is not well made.

27. We now know that the Council is willing to agree to conditions to resolve highway, drainage, waste and noise, which is capable of an engineered solution. This should have been clear to any professional and was accepted in the Back Lane appeal (Appeal Ref APP/T3725/C/25/3357094).

28. The Council say that it could not have made the decision it did in relation to the tilted balance until 4 days before the Hearing because there was no SOCG. But, the Council had changed its position, and it was for the Council to sort out the SOCG. The Council should have provided suggested changes to the SOCG which the appellant provided in November 2024. It would have been difficult for the appellant to do so when the Council has the knowledge.

29. It was not clear at the Case Management Conference (CMC) which party would be producing the SOCG and the deadline was missed. This was close to the Hearing and no possible cost in unreasonable behaviour could have arisen from this failure to anticipate the Council's change in direction.

Final submissions by the Council (made orally at the Hearing)

30. None

Reasons

31. 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. Examples of behaviour which may give rise to an award, which are set out in PPG, include where the appellant has only supplied relevant information at an appeal when it was requested, but not provided, at the application stage and where the appellant does not agree the SOCG in a timely way.

32. It is clear from the evidence that the Council was actively working with the appellant to resolve its objections during its initial consideration of the planning application.

33. The Council issued an enforcement notice on 23 July 2024 and this was to take effect on 26 August 2024. The appellant submitted an appeal on ground (a) but this could not proceed on the basis that the planning application was still under consideration. These circumstances appear to have been clarified around 24 October 2024. At that point the appellant had a choice to either proceed with the planning application or to submit an appeal against the failure of the Council to issue a decision.

34. The Council had made its objections clear to the appellant and on that basis information such as the RSA could have been provided earlier in the process. This may have resulted in a decision being made within the initial timescale for the determination of the application or within an agreed extension of time. However, there have been delays and these have been compounded by the changes to the Framework and the PPTS.

35. The Council needed time to consult with statutory consultees such as the LLFA and the Highways Authority which would have legitimately added to the timescale. It is probable that the changes in national policy would have coincided with the Council being ready to make its decision and that would have led to a need for it to seek further information from the appellant.

36. In respect of the timeframe for the submission of the RSA it was unreasonable of the appellant to take over six months to provide the information. But the Council would have needed to consult with the Highways Authority whenever this information was submitted and there does not seem to have been additional costs associated with that.

37. Similarly the Council had to wait a considerable length of time for the FRA, and it was necessary for there to be multiple consultations with the LLFA. Again this amounts to unreasonable behaviour by the appellant but it has not been shown that there was an additional cost associated with this.

38. It will be seen from my decision letter that there were still outstanding matters relating to the FRA which required clarification and input from the LLFA at the Hearing. While the Council had agreed that planning conditions were appropriate in relation to the risk of flooding it was not until the Hearing that this was clearly established. I also had questions about the safety of the access to the site at the Hearing and this is reflected in my decision letter. Thus the appeal and the Hearing could not have been avoided in relation to these matters.

39. Turning to the SOCG and the need for the SoC addendum. The Council sought to agree the SOCG with the appellant. The appellant argues that he could not have completed the SOCG because he did not have the latest position from the Council. That is a fair point but must be seen in the context of necessary information being submitted late in the process by the appellant. The SoC Addendum was helpful to the Hearing, but it was not necessary for it to be produced and there is no evidence that the Council was put to unnecessary or wasted expense in producing it. The appellant was not acting unreasonably in failing to agree the SOCG in a timely way.

40. Overall the appellant did not fail to agree the SOCG in a timely way but he did only supply relevant information at the appeal when it was requested, but not provided, at the application stage. In respect of the RSA and the FRA this amounts to unreasonable behaviour, but I have not found that this resulted in unnecessary or wasted expense by the Council. Therefore, an award of costs is not warranted.

Sarah Dyer

INSPECTOR