



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

Costs application in relation to 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 Mr Leslie Smith for a full or partial award of costs against Warwick District Council.
 - 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.
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Decision

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

Submissions by Mr Smith and the response by the Council

The submissions for the applicant (made in writing)

2. It was not possible to appeal on ground (a) in respect of the Enforcement Notice appeal. Therefore the only opportunity for an appeal was against the non-determination of the planning application.
3. The appeal was accompanied by additional information including a draft Statement of Common Ground.
4. The Council's reason for issuing the enforcement notice (EN) relates to harm to the Green Belt. It was not until the Council served its Statement of Case that it introduced further objections relating to insufficient information on a number of matters.
5. The Council's Statement of Case did not address changes which had been made to the National Planning Policy Framework (the Framework) and Planning Policy for Travellers Sites (PPTS). The Council acknowledged the unmet need for traveller pitches but did not address the implications of the lack of a five year supply of traveller pitches in the District.
6. On 19 January 2025 the applicant submitted a Road Safety Audit (RSA) and Percolation Test to the Council. By 11 March 2025 the applicant submitted all information regarding the safety of the access, including drawings. No further information has been provided (on those matters) since that date.
7. Following the Case Management Conference (CMC) on 9 June 2025 the applicant submitted a Supplementary Statement. This addressed changes in government

- policy and advanced the case that the site was 'grey belt' land, and that the traveller site was not inappropriate development.
8. Following the CMC the Inspector permitted submission of a Flood Risk Assessment and Drainage Strategy (FRA) to address the Council's concerns about surface water drainage.
 9. The Council did not submit a Supplementary Statement until 9 July 2025 which confirmed agreement that the development is not inappropriate development in the Green Belt and withdrew its objection on highway safety grounds.
 10. On 25 July, just four days before the Hearing the Council agreed that planning permission should be granted and that matters relating to highways, noise, surface water drainage, ecological impacts and waste management could be dealt with by condition.
 11. The Council acted unreasonably by not accepting that the development was not inappropriate development in the Green Belt and by not withdrawing its objections on the grounds of noise, surface water drainage, ecological impacts and waste management until the eve of the Hearing.
 12. The Council was involved in the Back Lane appeal (Appeal Ref. APP/T3725/C/25/3357094). At the Hearing on 15 April 2025 it was agreed by both main parties that the site constituted grey belt land, and the Council acknowledged that it did not have a five-year supply of specific deliverable traveller sites. The Inspector in that case found that the traveller site was not inappropriate development in the Green Belt.
 13. At the Back Lane appeal the Council had raised concerns about highway safety and foul and surface water drainage but agreed, even in the absence of any supporting information, that these matters could be dealt with by condition.
 14. It was clear that the Council's objections on the grounds of noise, surface water drainage, ecological impacts and waste management could have been dealt with by condition in the light of the Back Lane appeal decision.
 15. The appellant submitted a copy of the Edgcott appeal decision (Appeal Ref. APP/J0405/W/23/3332664) with his original statement of case. This appeal decision accepts that minimal details may be provided for surface water and foul water drainage, because of the costs associated with expensive studies being carried out, where there is uncertainty that planning permission may not be granted. The Inspector in that case also observed that such matters are often dealt with by condition.
 16. The Council failed to acknowledge the effect of change in government policy until as recently as 8 July 2025 requiring the applicant to respond to the Council's case that the development constitutes inappropriate development in the Green Belt and to engage a Barrister to present his case.
 17. The Council has not received any further information in respect to noise, ecological impacts or waste management since the appeal but waited until four days before the Hearing to acknowledge that these matters could be dealt with by condition. This resulted in the applicant having to call an expert witness to address the noise issue. The noise expert provided information at the Hearing.

18. The Council received sufficient evidence in March 2025 to demonstrate that safe access can be provided and by the date the percolation test was submitted that a suitable means of foul and surface water drainage could be provided. The Council's failure to accept that the percolation test demonstrates that infiltration is a viable means of draining the site resulted in further work in the form of the FRA.
19. The Council provided its statement of case in January 2025. Had it addressed the implications of the changes to government policy it could have withdrawn the enforcement notice and objections to this appeal. Consequently the applicant seeks a partial award of costs from January 2025.
20. Alternatively the relevant date for the consideration of a partial award of costs could be:
 - 25 April 2025 when concessions were made at the Back Lane appeal
 - 9 June 2025 when the applicant submitted a supplementary statement
 - 9 July 2025 when the Council submitted a supplementary statement, although at that point the Council did not accept that the tilted balance applied, only accepting it did shortly before the Hearing.

The response by the Council (made orally at the Hearing)

21. The Council accepts that the changes to government policy were not reflected in its statement of case submitted in January 2025. However, the supplementary statement by the applicant which addressed the changes was not sent until June 2025 being one of the documents requested to be re-sent during the CMC.
22. The changes to the Framework and PPTS had the effect of making it a tilted balance case but that does not generate a result. It is the substantive information that goes into the balance that generates the result, and the tilted balance may be overcome. That information kept coming in.
23. The FRA was not submitted until June 2025. Having seen seven separate concerns from the Lead Local Flood Authority (LLFA) that meant an ongoing conversation was necessary. The Council later confirmed that some, but not all the concerns could be dealt with by condition. The safety factor and run off to the M40 were matters that were discussed at the Hearing.
24. The Council took a different view on the Back Lane appeal and was happier that flooding and drainage was dealt with by condition. This is dependent on the site. In this case given the topography and risk of run off to the M40 these matters needed careful consideration in this case and could have been a 'deal breaker'.
25. The Edgcott appeal decision 'does not take us very far'. There was no assessment of flooding and drainage in that case. In this case there was information, and the safety factor issue.
26. Only when the Council was able to take a view on all of the substantive issues can it take a view on the planning balance and whether or not planning permission can be granted.
27. The Back Lane appeal decision is relevant and was at a late stage in June 2025.

28. The Council has reassessed its case but that is not avoidable or unreasonable even as late as it did.
29. In relation to other issues. Noise could be conditioned but from the discussions at the Hearing it is clear that there are still concerns about external amenity space and windows being open. That harm placed in the planning balance could result in a decision that the tilted balance was not overcome.
30. The attendance of the noise consultant was prudent given that there were outstanding issues that had not been overcome.
31. The reasons for serving the EN only concern Green Belt. But that can only be given limited weight as it was a different time in policy terms. The Council is entitled to reconsider in the light of substantive policy changes. If the EN drops away there is still planning harm.
32. The EN is a separate issue, and the Council is entitled to look at the planning application and decide further information is needed.
33. There is no basis for a partial award of costs from January 2025 or a later point. To the contrary the Council has been put to cost as a result of information being 'drip fed' by the applicant which is the subject of its own application for costs.

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

34. The tilted balance test is applicable, and the Council should have appreciated this from January 2025 or at the latest June 2025.
35. The Council had all the material it needed by June 2025, and it has now accepted that surface water drainage and flood risk can be dealt with by conditions.
36. Why did the Council not come to its position in June 2025, why so late as the Friday before the Hearing?
37. There is no reasonable basis for where the Council has arrived at, and costs have flowed from that.
38. The minimum reasonable date is June 2025 to cover costs.

Reasons

39. 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. One example of behaviour which may give rise to an award which is set out in PPG is a failure by a local planning authority to review its case promptly following the lodging of an appeal as part of sensible ongoing case management.
40. The Council's enforcement notice and its consideration of the planning application are separate issues. The Council was entitled to restrict its reasons for issuing the enforcement notice to harm to the Green Belt and to introduce further objections in the light of submissions made in relation to the planning application. Furthermore it should have been clear to the applicant that additional information was required by the Council because it had advised him of this during the consideration of the planning application.

41. The Council had information in the form of the RSA and additional plans in March 2025. At the Case Management Conference in June 2025 it advised that it had consulted the Highway Authority but that the final response had not been received. In its revised Statement of Case dated July 2025, the Council stated that that response had been received on 26 June 2025 which confirmed that there was no longer an objection to the development subject to conditions.
42. The Council could have addressed the changes to the Framework and the PPTS in its original Statement of Case, but it was not until after the CMC that it received the applicant's position on this matter in his Supplementary Statement dated 9 June 2025. In its revised Statement of Case the Council in July 2025 confirmed that in its opinion the development was not inappropriate development in the Green Belt on the basis of the concept of grey belt which was the key change in the Framework and the PPTS.
43. The timescale within which the Council engaged in providing a response is not excessive in either of these circumstances and it has not acted unreasonably.
44. Turning to references to the Back Lane appeal decision. Comparisons can be drawn between that development and the appeal scheme, but they do not relate to the same site and a separate assessment of whether the site constituted grey belt land was necessary and reasonable. Similarly whilst it may have been appropriate for concerns about highway safety and foul and surface water drainage to be dealt with by conditions in the Back Lane case it does not follow that the same applies in this appeal.
45. The applicant's position on whether the site was grey belt land was not made until his Supplementary Statement and as I have already concluded the Council's response was timely. It was not until the end of June 2025 that the Council had the response from the Highways Authority such that it could agree that planning conditions would be a suitable way to secure safe access to the site. The applicants FRA was not submitted until June 2025 and needed to be the subject of further consultations with the LLFA. Taken together the Council was not acting unreasonably in failing to withdraw its objections to the appeal scheme after the Hearing for the Back Lane appeal or after that appeal decision was issued.
46. The importance of resolving matters relating to drainage is evident from my decision letter. Therefore, it would not have been appropriate in this case for the Council to have adopted the same approach as in the Edgcott appeal and to rely on the percolation test information alone with further details secured by planning conditions. The further work and its associated cost in providing the FRA could not have been avoided in this case.
47. It is also clear from my decision letter that the issue of noise had not been fully resolved before the Hearing and whilst the Council had expressed a view that this matter could be addressed by planning conditions it maintained reservations about this approach. It was the appellants choice to employ a Noise Consultant to attend the Hearing, and he did provide useful information.
48. The Council did not clarify its position in respect of the tilted balance until its Statement of Case Addendum which was submitted shortly before the Hearing. However, it needed to reach a view on all of the submissions by the applicant before it did so. This information was submitted over a prolonged period and the Council needed time to process it. Whilst it could have made its position clear early

in July 2025 this would not have obviated the need for the Hearing, or the expense associated with that. It was the appellant's choice to employ a barrister to attend the Hearing.

49. Overall the Council did not fail to review its case promptly following the lodging of additional information as it came forward as part of its ongoing case management.
50. For the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Sarah Dyer

INSPECTOR