
Costs Decision

Hearing held on 19 August 2025

Site visit made on 20 August 2025

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2025

Costs application in relation to Appeal Ref: APP/X2220/W/25/3364988 Land South of Ash Road, Sandwich (Grid Ref Easting: 631509, Grid Ref Northing: 158554)

- 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 Dover District Council for a full award of costs against Mr A Gentle.
 - The appeal was against the refusal of planning permission for part retrospective change of use of the land to 8no pitch Gypsy & Traveller site with associated development including improved access, hardstanding, installation of package treatment plant and fencing.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.
3. The Council considers the appellant has exhibited unreasonable behaviour that is both procedural and substantive in nature. I shall address each point in turn.
4. In relation to procedure, the Council contends the appellant sent numerous documents after the deadlines set in the appeal start letter and failed to attempt to resolve the statement of common ground (SCG) I had requested.
5. The Town and Country Planning (Hearing Procedure) (England) Rules 2000 give Inspectors discretion to accept evidence at or before a hearing as long as it is disclosed. Given this, it was not intrinsically unreasonable to submit late evidence so long as I could be satisfied why it was not received in accordance with the rules, how and why the material was relevant, and whether it would be procedurally fair to all parties to take it into account.
6. I put these questions to the appellant when they submitted late evidence both before and at the hearing. I also invited the Council's views on whether it should be accepted. The responses received informed my judgement in accepting some documents and rejecting others. In relation to the material submitted before the hearing, I took account of the time available to the Council to consider it (one full week) and made clear I would be accepting no further evidence prior to the event as that would result in procedural unfairness.

7. As regards the documents submitted on the day of the event, I only accepted those that both parties agreed were material to my decision and could not reasonably have been made available earlier. The appellant responded promptly to my questions and accepted my decisions on each occasion, so I do not find they acted unreasonably during this process.
8. I recognise the parties failed to agree a SCG by the deadline I gave. I have not been provided with a full record of all the discussions that took place, so I cannot be certain of all that was said between the parties on this matter. Nevertheless, although a single finalised SCG would have been more helpful, I took the view that the two versions provided, read together, assisted my understanding of the matters in dispute. It was clear to me from the content of the two documents that there had been some attempt on both sides to articulate points agreed and not agreed. Thus, while I am sympathetic to the Council's position and acknowledge the time and effort spent in trying to finalise the SCG, there is insufficient evidence to persuade me the appellant acted unreasonably.
9. In relation to substance, the Council argues the appellant included statements in the SCG that were personal opinions without substantive or legal basis. It further states the appellant failed to defend the reasons for refusal, by not providing an up-to-date flood risk assessment (FRA) or proposing mitigation measures that would adequately protect the site; and by not providing substantive information to demonstrate mitigation measures for the effect of the development on the Thanet Coast and Sandwich Bay Special Protection Area (the SPA).
10. The appellant's arguments in relation to the main issues in the appeal were accompanied by numerous supporting documents. Although these did not ultimately persuade me on either count, I do not accept the appellant failed to defend his position, whether or not it included personal opinions. Further, whilst the FRA provided did not take account of the most recent Environment Agency flood risk mapping and modelling, the Council acknowledged at the hearing that this had only been published within about the last month. Thus, an update to the FRA to include this new information would have likely resulted in an adjournment. The FRA before me did include proposed mitigation measures, albeit ones I was not satisfied would be effective. It was nonetheless reasonable for the appellant to try to persuade me otherwise.
11. As regards the SPA, the appellant advanced arguments that fundamentally questioned the validity of the designation and mitigation approach. Therefore, this main issue turned on more than just whether adequate mitigation had been provided. The appellant did not submit a finalised legal agreement to secure mitigation, should I find it necessary. As I was unpersuaded by the appellant's arguments, the absence of mitigation led me to dismiss the appeal on this ground. Nevertheless, whatever the tactical merits of the approach, I do not find this behaviour intrinsically unreasonable given there were points of principle he wished me to determine.
12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Carpenter

INSPECTOR