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## Costs Decision

Hearing held on 22 and 23 June 2023

Site visit made on 22 June 2023

**by Katie Child B.Sc.(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 December 2023**

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**Costs application in relation to Appeal ref: APP/V2635/W/22/3294180  
Moyse's Bank, School Road, Marshland St. James, Wisbech, Norfolk PE14  
8EY**

- 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 Laurence Manning for a partial award of costs against the Borough Council of King's Lynn and West Norfolk.
  - The hearing was in connection with an appeal held against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use and the use of land for the keeping of horses and the erection of a stable.
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### Decision

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

### Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only 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 applicant contends that the Council acted unreasonably by requiring that the applicant provide information on personal needs and their Gypsy and Traveller status, and in the absence of this information refusing the proposal on the basis of inappropriate new residential development in the countryside (refusal reason 1) and the locational sustainability of the site (refusal reason 3).
4. The appellant subsequently provided more detail regarding status and personal circumstances in the Witness Hearing Statement. The Council accepted at the hearing that the appellant and his family are Gypsies and Travellers and that national and local policies relating to Gypsies and Travellers are relevant to the proposal. As such it was agreed that the principle of the development was acceptable in a countryside location. In the context of this new policy position

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the Council also indicated at the hearing that it considered the site to be a sustainable location for the proposal.

5. However, the Council maintains that it was appropriate to seek information on the applicant's Traveller status and personal circumstances, and in the absence of this to determine the application on the basis of general housing use. In support of this approach the Council refers to an appeal at Wheatley Bank, Walsoken. Paragraph 19 in this appeal decision states that *'in relation to those who are not currently Gypsies and Travellers as defined by PPTS [Planning Policy for Traveller Sites 2015], proposals for residential development should be assessed primarily in accordance with general housing and other plan policies, though their personal circumstances will also be material.'*
6. However, as set out in my appeal decision, I disagree with the Council's view on this. The Inspector in this appeal concludes that proposed provision exceeds identified needs and is assessing the Traveller status and personal circumstances of the various specific intended occupants. There is nothing in the Wheatley Bank case to suggest that all applications from non-Travellers or those not meeting the planning definition should be determined against general housing policies or that applications should identify specific occupants. Planning permission normally runs with the land and it is not necessary for an applicant to be a Traveller or have a nomadic habit of life to apply for permission for use of land as a Traveller's site. Planning conditions can be used to limit occupancy to Gypsies and Travellers and enforce any breaches. This position is supported by a number of appeal decisions referred to by the appellant<sup>1</sup>.
7. Furthermore, as set out in my appeal decision, Policy CS09 in the Council's Core Strategy (2011) does not specify that applicants should be Gypsies and Travellers or distinguish between Travellers who meet and do not meet the planning definition. Paragraph 24 in PPTS refers to the personal circumstances of the applicant, but as part of a range of factors to consider. The paragraph does not specify that all criteria should apply or preclude applications coming forward where the identity of occupants is not known.
8. Personal circumstances are capable of being a material consideration and personal occupancy conditions can be used if such matters are critical to a decision and outweigh harm. But if a scheme is acceptable in terms of its planning merits it may not be necessary to have recourse to them. As set out in my appeal decision, I have concluded that the proposal would be acceptable in terms of its planning merits and therefore the latter approach applies.
9. In support of their case the Council has also highlighted the covering letter submitted with the planning application which states that 'the application seeks permission for a wooden stable and 1 no. residential pitch to meet a recognised need and personal need for such facilities in the area to facilitate a gypsy lifestyle.' The Council states that it sought to obtain information on the personal needs/status of the applicant via a series of emails but did not secure further information. This fact was not disputed by the appellant. However, at the hearing the appellant explained that, as they considered the proposal to be acceptable in planning terms, they did not consider it necessary to provide details of personal circumstances.

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<sup>1</sup> Cost decisions Henry Janes v Bridgend County Borough Council (APP/F6915/A/2205366) and M Jones v Pembrokeshire County Council (APP/N6845/11/2151750/WF)

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10. Nonetheless, the covering letter also refers to general 'recognised need' for Gypsy and Traveller accommodation in the area. It is not clear why the Council decided that it was unable to determine the application as general accommodation for Gypsies and Travellers, having regard to evidence on local needs. In my decision I outline clear evidence of unmet needs for Gypsy and Traveller accommodation in the borough. As outlined above, it is also feasible to use a planning condition to control occupation to Gypsies and Travellers.
  11. The Council's approach does not appear to be supported by policy or case law. The appellant had clarified that the application was for use by Gypsy and Travellers. The Council's failure to fully address this matter in line with case law and its assessment of the proposal against general housing policies amounts to unreasonable behaviour.
  12. The PPG specifically states that a Council is at risk of an award of costs being made against them if they refuse planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
  13. In my appeal decision I have concluded that the proposed scheme is acceptable on its planning merits and would provide additional Gypsy and Traveller accommodation to meet identified needs in the area. As set out above, the use of planning conditions to secure Gypsy and Traveller occupancy is feasible and the Council could have elected to take this approach. This would have allowed the proposal to be assessed as Gypsy and Traveller accommodation and determined against national and local planning policies which provide implicit support for the general principle of Gypsy pitches in the countryside. I therefore conclude the Council has acted unreasonably in this regard.
  14. In summary, I conclude that unreasonable behaviour by the Council has been demonstrated in relation to its failure to assess the proposal as a Gypsy and Traveller site in the absence of information on the status/personal circumstances on the intended occupant, or to deal with the contested issue and secure occupancy for Gypsies and Travellers through a planning condition.
  15. The Council's actions have resulted in unnecessary expense to the appellant relating to the cost of addressing refusal reasons 1 and 3 within the appellant's appeal statement and in preparations for the hearing. Although the Council had conceded by the time of the hearing that refusal reason 1 no longer applied, the question of whether it is necessary to demonstrate Traveller/personal circumstances to enable an application to be determined for general Gypsy and Traveller use was fully discussed at the hearing, as the Council still maintained their position on this related aspect. Some discussion on refusal reason 3 also took place at the hearing as the Council did not confirm it was satisfied with the locational sustainability of the proposal until the hearing itself. A partial award of costs is therefore justified.
  16. I am not persuaded that the Council failed to review their case promptly following the lodging of the appeal. The Council submitted a statement of case as part of the appeal process. They subsequently altered their position with regards to refusal reasons 1 and 3 in response to evidence submitted by the appellant as part of the appeal. Other key evidence, in the form of the Council's updated Gypsy and Traveller Accommodation Assessment (June 2023), was not available until just prior to the hearing. The Council has responded to new evidence as it has arisen.

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17. An additional note from the Council received prior to the hearing suggested that there may be grounds for the appeal not to be heard, on the basis of evidence that the appellant had gained planning permission for a pitch elsewhere. I determined that the appeal should still be heard as it was necessary to explore the planning merits of the case, including general provision for Gypsy and Traveller use. However, I am not persuaded that the note amounts to unreasonable behaviour by the Council as it is a suggestion and the note also states that 'the Council hopes the matter will be explored at the hearing.' Furthermore, I promptly determined that the hearing should proceed and there is no evidence that the note resulted in unnecessary expense for the appellant.

### **Costs Order**

18. 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 the Borough Council of King's Lynn and West Norfolk shall pay to Laurence Manning the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with refusal reasons 1 and 3 as described above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to the Borough Council of King's Lynn and West Norfolk, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Katie Child*

INSPECTOR