
Costs Decision

Site visit made on 31 October 2016

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 December 2016

Costs application in relation to Appeal Ref: APP/P2114/W/16/3151599 Cooks Castle Farm, St. John's Road, Wroxall, Ventnor PO38 3AA

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Marian Perrott for a full award of costs against the Isle of Wight Council.
 - The appeal was against the refusal of planning permission for development described on the application form as the 'change of use and extension of industrial unit to form an indoor sand school'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out that 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.¹
3. The appellant's claim for an award of costs is essentially substantive in that it relates to the way in which the Council considered the appropriateness of the development. The main issue in the appeal was the adequacy of a proposed planning obligation (the 'undertaking') in bringing the indoor sand school, for which permission was sought retrospectively, in line with policy SP1 'Spatial Strategy' of the Island Plan: The Isle of Wight Core Strategy adopted in March 2012 (the 'Island Plan').
4. At application stage the appellant described the operation of the sand school as a '*private facility*', and subsequently referred to it as '*essentially private*', notwithstanding that there was some reference at this stage to its use in connection with a nearby livery business.² After the application was made to the Council the livery business was, however, sold as a separate unit from the indoor sand school. There is evidence before me that at this stage it remained

¹ Reference ID: 16-030-20140306.

² In paragraphs 3.2 of the appellant's planning statement and 2.1 of the appellant's additional statement, both of which were before the Council during their determination of the application.

the intention of the new owner of the livery business to make use of the indoor sand school.³

5. However at appeal the appellant described the need for the indoor sand school as 'reflecting the requirements of both the private owner and the livery business', and that it was intended for the facility to be available for hire potentially 'to local riders'.⁴ This intended use is reflected in the terms of the undertaking referred to above. Additional material was also provided at appeal regarding the benefits of such a facility for the wellbeing of horses.⁵
6. In this context it therefore appears to me that the emphasis placed upon the benefits of the sand school for personal or for wider use, and indeed in respect of the wellbeing of horses, changed significantly from application to appeal stage. The Council's officer report associated with the original application considered the benefits of the proposal primarily in relation to the personal use of the indoor sand school, and the Council's appeal statement indicates that they had regard to the additional information in relation to the benefits of the proposal submitted at appeal.
7. Consequently the Council cannot be said to have acted unreasonably in objecting to the proposal initially on the basis of the information before them, nor in arriving at a different position in respect of the benefits of the proposal at appeal in the light of the evidence available at this stage. Whilst I acknowledge that the National Planning Policy Framework (the 'Framework') sets out that local planning authorities should approach decision-taking in a positive way, the Council cannot therefore be said to have acted unreasonably in failing to suggest at application stage that additional information or an obligation may have overcome their objection to the development given that the intended use of the sand school was expressed primarily as personal.
8. However the Council proposed, based on the evidence submitted by the appellant at appeal, that an appropriately worded planning obligation could secure the continued use of the indoor sand school in connection with the nearby livery business and more generally (thereby meeting the requirements of policy SP1 of the Local Plan). In doing so they suggested clauses (ii) and (iii) to be included within a planning obligation to the appellant via correspondence on 12 October 2016.
9. Considered against the requirements of the Framework,⁶ as set out within the appeal decision, these clauses were in my view clearly inappropriate. Clause (iii) relates to matters outwith the appellant's control, and is unworkable given that it does not account for circumstances that may arise in the future (such as the closure of the livery business for a temporary period). The intention of clause (ii) is achievable instead via condition. In proposing these clauses and consequently in maintaining their objection to the development the Council therefore clearly acted unreasonably.

³ As set out in correspondence from the appellant to Council dated 19 November 2015.

⁴ As set out in paragraph 3.8 of the appellant's appeal statement.

⁵ Including documents entitled Health and safety guidance for inspections of horse riding establishments and livery yards, prepared by the Chartered Institute of Environmental Health, dated 2006, and Equine Industry Welfare Guidelines Compendium for Horses, Ponies and Donkeys (second edition) prepared by the National Equine Welfare Council, dated 2005.

⁶ In particular paragraphs 203 and 204.

10. Whilst the appellant has not precisely enumerated the expense that she has incurred in support of her approach to the undertaking, it is clear however that some time and expense has been incurred by the appellant and her representatives in pursuing the appeal beyond the date on which the undertaking was submitted, being 2 November 2016.⁷
11. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary expense has been demonstrated in relation to the Council's proposed clauses (ii) and (iii) of the undertaking. Therefore that a partial award of costs is justified in respect of the appeal proceedings falling beyond 2 November 2016 where the dispute at appeal was confined to these clauses following the submission of the undertaking by the appellant.

Costs Order

12. 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, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Isle of Wight Council shall pay to Ms Marian Perrott the costs of the appeal proceedings limited to those costs incurred following 2 November 2016; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Isle of Wight 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.

Thomas Bristow

INSPECTOR

⁷ With reference to Guidance Reference ID: 16-032-20140306.