
Costs Decision

Inquiry opened on 4 April 2017

Site visit made on 7 April 2017

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 03 May 2017

Costs application in relation to Appeal Ref: APP/C3240/W/16/3149398 Land off Muxton Lane, Muxton, Telford, Shropshire TF2 8PG

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gladman Developments Ltd for a partial award of costs against Telford and Wrekin Council.
 - The Inquiry was in connection with an appeal against the refusal of outline planning permission for a residential development of up to 78 dwellings with associated access.
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Decision

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

The submissions for Gladman Developments Ltd

2. The costs application was submitted in writing at the Inquiry. I summarise the main points below as well as the additional points that were made orally. The application is for a partial award of costs based on the following 2 reasons.
 3. The first is the Council's unreasonable reliance on the erroneous approach previously taken to paragraph 14 of the National Planning Policy Framework (Framework) that had caused the Secretary of State (SoS) to consent to judgment on a Section 288 Claim. It is unreasonable because it would be necessary to persuade the Inspector to take the same approach that the SoS considers to be unlawful; the interpretation is not supported by any reasonable reading of paragraph 14 or the Framework as a whole; it is not an approach which Inspectors on three previous appeal decisions adopted and was not challenged by the Council; and the Council has offered no justification or change in material circumstances to warrant a departure from this clear line of decision making.
 4. This unreasonable conduct falls within the scope of failing to interpret national policy properly and failing to determine similar cases in a consistent manner. This unreasonable behaviour has caused unnecessary expense because it has prolonged the Inquiry due to a disproportionate amount of time being spent on the cross examination of witnesses on this matter and the appellant has been required to provide detailed policy evidence on this matter in its Proof of Evidence and orally. The exact amount of this additional expense is not to be determined at this stage.
 5. The second reason is the Council's unreasonable conduct in raising the issue of historic landscape through the written evidence of one of its witnesses. The
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reasons for refusal do not mention historic landscape, making them not clear and precise; it is not mentioned in the Statement of Case; the Council's witness did not mention this issue until March 2017; there was no mention by the Council in December 2016 when it resolved not to defend reasons for refusal 3 and 4; the Council's witness did not give notice of her view on the historic landscape to anyone on the appellant's or Council's teams; and the first time this entirely new point was brought to the appellant's attention was upon receipt of the witness's Proof of Evidence.

6. The Council has consequently introduced fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. This work has been in the form of the preparation and production of a Supplementary Proof instead of covering it in the main Proof of Evidence had proper notice been provided.

The response for Telford and Wrekin Council

7. The response was submitted in writing at the Inquiry. I summarise the main points below as well as the additional points that were made orally. The response is to the 2 reasons given for a partial award of costs.
8. In relation to the first reason, the Council's decision to pursue the paragraph 14 case had been considered alongside other decisions that were not to pursue other former submissions on the basis of professional judgment. The Council followed the approach that the Inspector took in considering a previous appeal for development of the site. There is nothing unreasonable in taking a different view on policy to that taken by the SoS and the Council refused to consent to the quashing of the previous appeal decision on the paragraph 14 ground. A subsequent appeal Inspector came close to the approach of using the words '*as a whole*' taken by that previous Inspector when he considered '*the majority of*' relevant policies.
9. The interpretation of policy is a matter of law and cross examination on law is inappropriate. It was the appellant's fault that it resulted in lengthy cross-examination. The Inquiry did not extend beyond the 4 day estimate for the Inquiry that was agreed by the appellant. The appellant's evidence has been to a considerable extent the same as at the previous Inquiry and at the Haygate Road Inquiry. Costs are generally not awarded where there would have been little or no extra cost.
10. In terms of the second reason based on the historic landscape evidence, the Council's preparation of its case shadowed that which the appellant had informed the Council it would take and sought to minimise the Council's costs. The Council appointed a different landscape witness from that appearing at the previous appeal for development on the site, as that witness had retired. The appellant could have contacted the Council's witness to find out about any differences in principle. The witness's obligation was to apply her professional judgment. Her Proof was produced in parallel with the appellant's Proof, with exchange of Proofs on 8 March, and this was reasonable.
11. The evidence given on historic landscape in the Council witness's Proof should have been foreseen by the appellant; was within the scope of the reasons for refusal; and reflected her independent application of her professional judgment. Furthermore, even if she had produced her evidence at an earlier

time, the appellant would still have had to have done the same work. The appellant's Supplementary Proof was completed on 21 March.

Reasons

12. 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.
13. Parties in planning appeals normally meet their own expenses. In this respect, the applicant has not suggested that the Council has failed to submit evidence in accordance with the timetables that were set, including agreeing a Statement of Common Ground (SoCG), and the Inquiry did not take longer than the 4 days that had been agreed as an estimated duration.
14. The SoCG makes it clear that the appellant and Council do not agree with the use of the 'enhanced presumption' in paragraph 14 of the Framework. I am satisfied that, as the previous appeal on the site was quashed by the consent of the SoS, it was necessary to explore the relevant policies again in the current appeal to determine whether or not the paragraph 14 balance applied.
15. It was not unreasonable for the Council to put its case with regard to how paragraph 14 should be applied, particularly as it had not agreed with the SoS in its stance taken in consenting to judgment on this matter. Very little evidence has been put forward to show that the Council has not determined similar cases in a consistent manner, given that the previous appeal decisions that have not supported the Council's position depended upon the evidence that had been presented and the circumstances of the case. As such, I find that there is very little evidence to show that the Inquiry was unnecessarily prolonged as a result of the cross examination on this matter, taking into account that it is within the appellant's control as to how much time is spent on cross examining witnesses.
16. With regard to the second reason, the SoCG indicates that the parties disagree on the magnitude of the landscape and visual impact of the proposal and will present expert evidence on this matter to justify their respective stances. In this respect, the Council's expert witness has presented her Proof of Evidence in a timely manner and it supports the Council's stance by reference to the historic landscape that is mentioned in the appellant's 'Archaeological Desk Based Assessment', which specifically refers to the historic importance of the hedgerows and the type of landscape that covers the appeal site. Although the Council has not specifically mentioned this matter in its reasons for refusal or Statement of Case, reference to the type and history of the landscape should not have come as a particular surprise to the appellant given the work that had previously been carried out by its experts.
17. Whilst the reasons for refusal do not specifically mention the historic landscape, this matter is encompassed by the first reason in that it relates to the value of the landscape when considering the level of harm due to the encroachment into the surrounding countryside and to visual amenity. The Statement of Case refers to the 'valuable and important contribution' that the appeal site makes to 'the character and amenity of the area'. Whilst the significance of the historic landscape to the value of the landscape was not mentioned in the expert evidence for the previous appeal, that does not prevent it from being relevant to the current appeal.

18. The appellant responded to this evidence by the production of a Supplementary Proof and Appendices, and the work involved would have been similar had the Council provided its evidence on historic landscape earlier. The time between the exchange of Proofs and the completion of the Supplementary Proof is insufficient to prove that unnecessary additional expense had been incurred by the appellant in responding to this matter, of which the appellant's expert should have previously been aware. For the reasons given above, I do not accept that the Council has introduced fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M J Whitehead

INSPECTOR