
Costs Decision

Inquiry Held on 27 February to 1 March 2018 and 12-14 June 2018

Site visit made on 13 June 2018

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 10 July 2018

Costs application in relation to Appeal Ref: APP/X2410/W/16/3152082 Land to the east of Seagrave Road, Sileby, Leicestershire

- 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 Hallam Land Management Limited and Trustees of the Skerchly Trust for a partial award of costs against Charnwood Borough Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for residential development of up to 195 new dwellings, together with new areas of public open space, landscaping, access and surface water attenuation.
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Decision

1. The application is allowed in part in the terms set out below.

Reasons

2. 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. The costs application and the Council's response were submitted in writing at the inquiry, although both parties made additional oral submissions.
3. The costs application relates to two parts of the Council's case. First, costs are sought in respect of the Council's notional highways refusal reason. In summary, it is noted that this notional refusal reason was withdrawn prior to the original planning inquiry, and reinstated – initially contrary to the advice of officers – before the opening of the present inquiry. In addition, reference is made to the withdrawal of that part of the local highways authority's case, and therefore the Council's case, in respect of the Sileby and Barrow-upon-Soar Transport Study (SBSTS) at a late stage during the present inquiry.
4. Second, costs are sought in respect of the withdrawal of the Council's initial proof of evidence in respect of odour concerns, prepared by Mr Stigwood, and its replacement with a new proof of evidence by a different witness (Dr Bull).
5. Dealing with the second matter first, it is not disputed that there are material differences between the evidence submitted by Mr Stigwood and Dr Bull. In particular, Mr Stigwood adopted a different threshold of acceptability in respect of dispersion modelling (of $1.50U_E/m^3$) to that subsequently agreed between the main parties (of $3.00U_E/m^3$). As a result, the appellants undertook unnecessary work in having to respond to a case that was not ultimately made in those terms.

6. However, as set out in the main decision, the delay to the second part of the inquiry, in respect of odour and noise evidence, resulted from the appellants' wish to carry out additional work to respond to the Council's concerns on those matters. Given that these concerns had not been raised by the Council at the first inquiry, and therefore were effectively new main issues, and bearing in mind that odour and noise evidence is potentially affected by seasonal factors, it was appropriate that the inquiry should be delayed for that reason. At the time of setting the timetable, the Council was clear that Mr Stigwood would not be available for the dates that were proposed for the inquiry's resumption.
7. In the circumstances, it was not unreasonable of the Council to seek to provide an alternative witness, thereby requiring the submission of a new proof of evidence. Given that the contents of a proof of evidence are clearly a matter for the witness concerned, it does not seem unreasonable for Dr Bull to present a case that, in some respects, differs from that of his predecessor. On balance, and notwithstanding that the appellants undertook work that proved to be unnecessary, I do not feel that the Council behaved unreasonably in this respect. An award of costs in respect of this matter is not therefore justified.
8. In respect of the highways notional refusal reason, the main and rebuttal proofs submitted by the Council's transport witness (Mrs Wong), along with her oral evidence, demonstrate that the findings of the SBSTS formed a substantive part of the Council's case. The subsequent withdrawal of this evidence during the latter part of the inquiry, with no reasons given for the change in position, clearly amounts to unreasonable behaviour. The appellants have therefore been put to unnecessary expense in addressing the study, most particularly in terms of preparing the relevant proof of evidence. A partial award of costs in this regard is therefore justified.
9. I am aware that the appellants seek an award of costs in respect of the full scope of the highways issue. However, with reference to Mrs Wong's oral and written evidence, it is clear that the case of the local highway authority (and therefore the Council) raises wider concerns than those arising from the SBSTS. While I have reached a different conclusion to that of the Council on the substantive issue, for the reasons set out in my main decision, I am satisfied that the relevant concerns were adequately explained by the witness with reference to the development plan and national policy. The Council did not therefore behave unreasonably in respect of the rest of the highways issue.
10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated in respect of the Council's reliance on the SBSTS for the initial part of the inquiry. I conclude that a partial award of costs in respect of that matter is justified.

Costs Order

11. 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 Charnwood Borough Council shall pay to Hallam Land Management Limited and Trustees of the Skertchly Trust the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred as a result of responding to the Sileby and Barrow-upon-Soar Transport Study, such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Charnwood Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M J Hetherington

INSPECTOR