The Planning Inspectorate

Costs Decisions

Inquiry commenced on 9 October 2019

Site visit made on 14 February 2019

by Frances Mahoney MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Costs applications in relation to Appeal Ref: APP/Y3940/W/17/3190561
Old Sarum Airfield, Lancaster Road, Old Sarum, Salisbury, Wiltshire

- 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).
- An application is made by Old Sarum Airfield Limited (Mr Grenville Hodge) for a partial award of costs against Wiltshire Council.
- An application is made by Wiltshire Council for a full award of costs against Old Sarum Airfield Limited (Mr Grenville Hodge).
- 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 the demolition, modification and renovation of existing buildings, structures and site development. Provision of approximately 18.6ha of residential land accommodating approximately 462 residential dwellings. Provision for a mixture of employment, commercial/leisure, office use (Class B1) and aviation uses on 3.51ha of land at Area B, including a flying hub comprising new control tower, heritage centre, visitor centre, café/restaurant, parachute centre, aviation archives and aircraft hangars. Provision of associated access, including the construction of new points of vehicular access to the surrounding highways network, car parking and connections to the surrounding footpath and cycle networks, green infrastructure provision, including open space, play space, recreational footpaths and landscape enhancement areas; the provision of above and below ground utilities, including a sustainable urban drainage system. Associated vegetation removal, ground modification and engineering works.

Inspector's reasons

1. Two individual costs applications were made at the Inquiry and my reasoning is based on the grounds as set out in Inquiry Documents 40 and 41 in respect of the application by the appellant company and Inquiry Documents 43 and 44 for the Council's application. I have dealt with the two applications together as some reasoning is common to both decisions.

2. 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. In these instances, there are allegations of both procedural and substantive unreasonable behaviour.

3. The planning application, the subject of this appeal was submitted to the Council in June 2015. The appeal against the failure to determine the proposal was accepted as being a valid appeal in January 2018. The scheme took in the order of two and half years to move to a point of impasse between the parties

in respect of negotiations. This is a disappointing position to be in on a site where there is a commitment to the development of the Airfield[1] through an adopted Development Plan policy and where there is a clear public benefit centred on improving residential amenity in the immediate and wider community.

4. Over those two and half years the condition of the listed hangars have, no doubt, deteriorated further. The partnership between the Council and the appellant company, which the supporting text to CS Core Policy 25 envisages to be a developmental factor in the production of the Masterplan[2], has similarly degenerated. My experience of the Inquiry was that at times it was a somewhat ill tempered, confrontational event. The historic importance of the Airfield and its long-term future as a flying hub along with the need to enhance its historic character must be at the forefront for those involved in the development of a suitable masterplan to deliver the benefits of the scheme.

5. The appellant company contend the requirement of the Council for them to sign up to a S106 agreement when appropriately worded conditions, including pre-commencement conditions, could have done the job, was unnecessary. CS Core Policy 25 iii sets out that the completion of a legal agreement (section 106) to agree reasonable controls over flying activity in the interests of the amenity of local residents would be required to be delivered for new development to be permitted on Old Sarum Airfield[3]. This policy requirement has been part of the Development Plan since 2012[4] having been through an open and fair testing of policy through the examination process on two separate occasions[5]. So, this policy requirement could hardly have come as a surprise to the appellant company.

6. Paragraph 54 of the Framework states that "planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition". The Planning Practice Guidance reiterates this stance.

7. Notwithstanding the commitment of the Council and the appellant company to maintain flying from the airfield, the Development Plan through CS Core Policy 25 seeks to introduce controls over the level and intensity of flying activities from the Airfield, there being a history of complaints about noise from local residents caused by over-flying Salisbury. The securing of this requirement along with its successful fulfilment in terms of monitoring and enforcement is vital when considering the weight to ascribe to this important public benefit in the balance of the acceptability in planning terms of the proposed development. In my decision I expressed the view that the mechanism to secure the proffered restrictions of current unfettered usage and consequent noise levels needs to reflect the requirement set out in CS Core Policy 25 iii there being rights over private land involved. This reflects the view of the two previous Examining Inspectors.

8. The appellant company had produced a S106 agreement to the Inquiry which covered all the matters in respect of Aviation Use[6]. It also included the matter

[1] Subject to policy criteria.
[2] CS para 5.135 page 166.
[3] Along with a number of other criteria.
[4] SWCS adopted 7 February 2012 – Policy 9.
[5] PPG Planning Obligations - Paragraph: 004 Reference ID: 23b-004-20190315. Plans should set out policies for the contributions expected from development to enable fair and open testing of the policy at examination. This equally applies to policies which are strategic in nature as well as those relating to particular sites.
[6] Inquiry Doc 31 Part 5.

of providing funding for the monitoring and review by the Council of aircraft noise, as well as other matters, including securing public access to the footpaths and cycleways[7], management of the open space, the travel plan, payment of the Waste and Recycling contribution, setting up of a management company and discontinuance of a land use within a prescribed time frame. As a comprehensive approach and, taking into account the nature of these rights over land, the S106 was necessary in accordance with Development Plan policy.

9. The appellant company may have been 'hedging their bets', but they went to some trouble to get the completed Unilateral Undertaking signed and submitted to the Inquiry before it closed[8]. Therefore, a negatively worded condition requiring a planning obligation or other agreement to be entered into[9] before the development could commence was not necessary as the Unilateral Undertaking covered the point and it was not clear that exceptional circumstances existed in any case.

10. As I concluded in my decision the Unilateral Undertaking was required and was the appropriate mechanism to secure the limitations on flying I do not consider the Council acted unreasonably in promoting compliance with an adopted part of the Development Plan policy[10].

11. The appellant company also alleges that various matters identified in the putative reasons for refusal could have been dealt with by planning condition. In my Pre-Inquiry Note dated the 12 June 2018 I made it clear that I expected both parties to work together to submit an agreed schedule of conditions. This does not appear to have happened. There was discussion to a limited degree but no agreement, both parties having produced draft schedules neither of which reflected the other.

12. Inquiry Document 2 Draft Conditions/s106 Obligations was submitted by the appellant company to inform a discussion on conditions. I did charge both parties at that stage to engage outside of the Inquiry to try to reach some agreement on wording of conditions without prejudice as their relative positions on the delivery of some requirements were polarised. Even with the long adjournment in the Inquiry positions were still disputed.

13. Ultimately whether Grampian style conditions are an acceptable solution in a particular context is a matter of planning judgement on all the evidence. To reach that judgement the evidence had to be tested.

14. Therefore, in the context of a failing partnership between the Council and the appellant company the Inquiry became the vehicle to draw the parties together and focus them on outstanding matters.

15. The appellant company is also aggrieved at the request by the Council for further information, particularly relating to the restoration of the listed hangar and the buildings within Area B. However, the appellant company provided Inquiry Document 36 which, whilst illustrative representations, did show what could be designed to achieve the vision for these proposed buildings and their

[7] Inquiry Doc 40 para 12 – appellant company accepted the Unilateral Undertaking was required for this purpose.
[8] PPG Planning Obligations - Paragraph: 018 Reference ID: 23b-018-20190315 – Inquiry Doc 31.
[9] In exceptional circumstances.
[10] CS Core Policy 25 iii.

relationship with the existing historic aviation-centric buildings[11]. As I expressed in my decision the plans were helpful in presenting an exciting and innovative glimpse at what could be achieved at Old Sarum[12].

16. I have noted that the Truss Report and costings to repair the listed hangar were before the Council in Mid-2017. However, with the passage of time and the need for the decision-maker to understand the condition of the building, this is evidence which did require to be examined at the Inquiry.

17. Whether a requirement was justified or not is a matter for the decision-maker. The requirements did evolve over the duration of the Inquiry as evidence was tested and relative positions on some topics did modify.

18. The Council's request for costs is largely based on their contention that they had requested more detail to judge the proposal as early as 2014 and yet the planning application which was submitted in 2015 had moved on little from the pre-application advice and little if any further progress was made over the time in which the Council were considering the planning application.

19. However, with that being the case I fail to understand why the Council continued to consider a planning application which, by their own judgement, was lacking appropriate detail for two and half years when they always had the option to refuse it in a timely manner due to its inadequacies[13]. I do appreciate some negotiations were carried out but as I identified in my decision the Illustrative Master Plan and associated material had shortcomings and I found them wanting in heritage terms[14].

20. I did not, however, find the appellant company's case hopeless as suggested by the Council. I also appreciate the Council's point that over the course of the appeal process the appellant company was evolving the scheme through their evidence and submissions to the Inquiry. However, this was partially due to the break down in the partnership between the Council and appellant company. In my view, both the Council and the appellant company were complicit in creating a situation where their failing communication and entrenched positions led us all to the Inquiry room. It was the process and demands of the Inquiry which finally drew all the parties together and exposed the issues for evidential consideration.

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21. Therefore, I find unreasonable behaviour on both sides. However, for an award of costs to be successful there has to be wasted or unnecessary expense. Given the final entrenched positions of both parties, I do not see that the Inquiry could have been avoided, entailing the necessary preparation, presentation and examination of the related evidence. All in all therefore, I am not persuaded that the actions of either party have led to unnecessary or wasted expense being incurred by the other party in this case. To conclude, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the planning guidance, has not been demonstrated and that no award of costs to either party is justified in this instance.

[11] Inquiry doc 36 is dated October 2018 at the time the Inquiry commenced.
[12] Appeal decision APP/Y3940/W/17/3190561 para 31.
[13] The Council's cost application at paragraph 18 sets out that whilst much time has passed, little has changed in relation the nature of the appellant company's case.
[14] Appeal decision APP/Y3940/W/17/3190561 para 66.

22. I hope that both parties will work together to find an acceptable way forward for this site in the context of the spirit of the terms of the Development Plan policy, delivering the identified benefits for residents and preserving and enhancing this nationally important heritage asset, whilst fulfilling its potential of revitalising the flying field, paying respectful homage to its past and embracing its future firmly based in a continuation of flying from the Airfield.

Frances Mahoney

Inspector