



Costs Decision

Inquiry held on 17-20 September 2019

Site visit made on 18 September 2019

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Costs application in relation to Appeal Ref: APP/C2741/W/19/3223376 Land to the west of Bradley Lane, Rufforth, York

- 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 H Barker and Son Ltd for a partial award of costs against York Gliding Club.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of a poultry farm comprising 3 no poultry sheds with ancillary buildings, access road and landscaped embankments.
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Decision

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

The submissions for H Barker and Son Ltd

2. It is fully appreciated that successful award of costs in planning inquiries are rare and the bar in relation to a claim against interested parties who have chosen not to elect 'Rule 6' status is higher still. The test is "exceptional circumstances".
3. In this case, that bar has been surpassed. York Gliding Club (YGC) has been actively involved in these proceedings at all stages. It initially obtained 'Rule 6' status but later changed its mind. With 'Rule 6' status come benefits and burdens. In choosing not to elect 'Rule 6' status it is not right that YGC should retain the benefits of being able to submit technical, expert evidence without any regard to procedural responsibility.
4. Captain Wrigley has positively set himself up as an expert; he was lauded as such by the Council. The document produced for the first time at the Inquiry on Wednesday 18 September 2019 was headed "Evidence". It was a document containing 46 paragraphs spread over 10 pages.
5. The applicant made repeated requests for any evidence of a technical or legal nature to be given by any interested party in advance. YGC did not do so.
6. When detailed, technical evidence is produced by an expert witness without warning, an applicant has no choice but to take it seriously. In this case the applicant had no option but to seek an adjournment to provide Mr Hinchcliffe and Osprey Consulting with the opportunity to respond properly. The rebuttal proof prepared by Mr Hinchcliffe was undertaken expeditiously and was proportionate.

7. Whilst the enforced adjournment did not cause any extension to the allocated Inquiry sitting days, the necessity of preparing a rebuttal proof caused unnecessary and unforeseen expense to the applicant.
8. YGC was given a choice, in the knowledge of a pending application for an award of costs, as to whether it wished to proceed to submit its evidence. In full knowledge of the consequences, it elected to continue.
9. The behaviour of YGC has been unreasonable. Indeed, its behaviour has been sufficiently unreasonable as to clearly surpassed the threshold of exceptional circumstances.
10. As a result, the applicant has been put to unnecessary expense limited to preparation of the rebuttal proof, review and consideration by the appeal team. In the circumstances, the applicant is entitled to a partial award of costs to compensate it for being forced to undertake work it should not have had to undertake.

The response by York Gliding Club

11. Whilst it is true that YGC were at one time a 'Rule 6' party, this status was resigned in May this year. The reason was purely down to costs.
12. YGC is an interested party who has set out its case clearly in writing during the planning application process and then responded to the case that had been presented at the Inquiry. This is the norm for interested parties and does not constitute exceptional unreasonable behaviour.
13. The applicant was fully conversant with YCG's case from earlier submissions and has not pointed to any new or startling evidence that has emerged from what had been heard during the Inquiry prior to the YGC submission. The only new documents that YGC submitted were the 3 drawings offered at the start of the Inquiry and they were merely a visual representation of what takes place on the airfield.
14. As for Captain Wrigley's status, in YGC's original submissions to the Council, he was referred to in that way and so this was not a shock to the applicant.
15. As for Mr Hardy's "repeated requests for any evidence of a technical or legal nature", these were unfortunately missed. In any event the submissions were made in response to what had been heard up to that point during the Inquiry.
16. It is agreed that the title of the submission as "Evidence" was a mistake. It was a response to what had been heard by the Inquiry up to that time and the title should have reflected that.
17. As to whether any costs have been incurred by the applicant as a result of YGC's submission, no Inquiry time was lost and, were it possible, had those same submissions been earlier, a response to them would have required the same amount of work. What YCG did by preparing and submitting a written version of what we intended to say was done purely out of a desire to assist the Inquiry. We could have simply read from our notes, but we chose to try and be helpful to all participants.
18. For the reasons detailed above, it is submitted that YGC has not behaved unreasonably, let alone exceptionally unreasonably.

Reasons

19. Planning Practice Guidance (PPG) sets out that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. One of the aims of the Costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
20. PPG advises that it is not anticipated that awards of costs will be made in favour of, or against, other interested parties, other than in exceptional circumstances¹.
21. I noted the applicant's advocate asked for copies of any evidence YGC were intending to produce when they presented their objections. Nothing was offered. However, when YGC's time came to speak, both speakers produced copies of what they intended to say in writing, and both were titled "Evidence".
22. Some of the content referred to matters spoken of at the Inquiry on the previous day, but most were matters that could have been presented before the Inquiry. I accept YGC were attempting to assist the Inquiry, but the submission of late written evidence outside the procedural timescales was unreasonable, even for an interested party.
23. As a result of the submissions, the applicant's aviation expert prepared a Rebuttal Proof and time was spent briefing the applicant's appeal team. The Inquiry was adjourned for a short time, but this presented an opportunity for the site visit to be carried out and added no additional sitting days to the event.
24. Whilst additional expense was incurred by the applicant, had this evidence been produced earlier, I see no reason why the applicant would not have carried out similar work given their strong desire to respond to the evidence.
25. Therefore, whilst the behaviour was unreasonable, this did not cause the applicant to incur unnecessary or wasted expense in the appeal process. Furthermore, no significant amount of Inquiry time was lost.
26. Consequently, both tests of the costs' regime are not met, and an award of costs is not justified.

Katie McDonald

INSPECTOR

¹ Paragraph: 056 Reference ID: 16-056-20161210 Revision date: 10 12 2016