



Costs Decision

Inquiry opened on 18 June 2019

Site visits made on 1 November 2019

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 14th January 2020

Costs application in relation to Appeal Ref: APP/Q3115/W/16/3156409 Land south-west of London Road, Tetsworth, Oxfordshire

- 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 South Oxfordshire District Council for a partial award of costs against Mr L Wells.
 - The inquiry was in connection with two appeals. Appeal ref APP/Q3115/W/16/3156409 (appeal A) was against the refusal of planning permission for development described as 'change of use from agricultural land to provide proposed traveller site with provision for twelve individual plots with individual parking, individual amenity, shared paddock/amenity space and bin storage areas'.
 - The inquiry sat for eight days: 18-21, 25 & 26 June, 31 October, and 1 November 2019.
-

Decision

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

Procedural matters

2. Tetsworth Parish Council (PC) had served a statement of case in accordance with Rule 6(6) of The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 in respect of each appeal, and it took a full part in the proceedings of the inquiry.
3. The main parties agreed that the site should be referred to as land south-west of London Road, and that appeal proposal A should be described as *change of use from agricultural land to provide a traveller site with 12 pitches, amenity space, and a bin storage area*. The second appeal considered at the inquiry was appeal ref APP/Q3115/W/18/3205628 (appeal B). This appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for development described as 'change of use from agriculture to gypsy and traveller site providing twelve individual plots'. The main parties agreed that appeal proposal B should be described as *change of use from agricultural land to provide a traveller site with 12 pitches*. The costs application concerns appeal A alone.

The submissions for South Oxfordshire District Council

4. The application and final comments were made in writing (Documents L16 & L21). The gist of the submissions is as follows. A partial award of costs is sought as the Appellant's unreasonable behaviour caused the late postponement of the inquiry into appeal A which had been scheduled to take

- place in November 2017. The application is not out of time as appeal A was not withdrawn, and no prejudice is caused by the timing of the application.
5. The inquiry had been due to commence on 21 November 2017. The Local Planning Authority (LPA) had instructed counsel and five witnesses to present its case. On the previous day Ms A Banks contacted The Planning Inspectorate, initially by telephone and then by email, advising that she was due to give evidence at the inquiry on behalf of the Appellant and that she knew the Inspector appointed to determine the appeal. The inquiry was then postponed¹.
 6. Ms Banks had served no evidence and there had been no previous indication that she was to be a witness. It was not until a letter was received from Mr B Woods (on behalf of the Appellant) dated 22 November 2017 that it was disclosed that Ms Banks would have addressed drainage matters². That letter suggested that the Appellant had thought that drainage was no longer in issue. However, no statement of common ground had been agreed, the LPA's objection in respect of flooding and drainage had not been withdrawn, and the LPA had submitted a proof of evidence on this matter. Ms Banks does not have drainage qualifications: if the Appellant had served a proof 28 days before the inquiry was due to commence, in accordance with the timetable, he would have been able to appoint an expert, or The Inspectorate would have had time to change the Inspector.
 7. Even if the inquiry had gone ahead, the introduction of new evidence from Ms Banks would have been unreasonable. The Appellant's drainage consultants could have provided written evidence at the proper time: had this been done and the issue been very limited, it may have been possible to agree common ground.
 8. The LPA incurred costs in preparation for the November 2017 inquiry: proofs had been drafted which subsequently had to be revised, witnesses had undertaken preparation and booked hotels, fees were incurred for external witnesses and counsel, and payment had been made for the inquiry venue. Costs wasted in preparation for an inquiry in 2017 were not transferrable to another inquiry in 2019.
 9. It was unreasonable for the Appellant not to respond to the application at the inquiry. If this had been done, the LPA would have made its final comments orally. The cost of making these comments in writing is claimed.

The response on behalf of Mr L Wells

10. The response to the costs application was made in writing (Document A28). The gist of the response is as follows. It is strongly refuted that unreasonable behaviour caused the postponement of the inquiry. The date of the inquiry into appeal A changed a number of times: an inquiry arranged for 6 June 2017 was postponed following an increase in sitting days suggested by the PC, the inquiry arranged for 21 November 2017 was postponed, and an inquiry arranged for August 2018 was postponed as it was decided to link the appeal with appeal B.

¹ Emails dated 20 November 2017 attached to Document L16.

² Letter attached to Document L16.

11. It was not unreasonable for the Appellant to seek the proper defence of his case. Although there was no statement of common ground at the time the proofs were submitted, it was considered that matters on highways, drainage and ecology had been addressed. In the introduction to Mr Woods's proof of evidence he anticipated that the drainage reason for refusal would be withdrawn. The LPA's objection on drainage related to the lack of detailed information, and the Appellant thought that this could be managed through a condition.
12. Ms Banks had been providing planning advice and consultancy services to the Appellant since June 2017. She arranged for Infrastructure CS Ltd to be commissioned to address drainage matters, but they could not attend the inquiry. It was decided that Ms Banks should appear as she had negotiated with the drainage experts, and she prepared a proof based on their evidence and advice. Ms Banks only discovered that she knew the Inspector on the morning of the day before the inquiry, and she immediately sought advice. For proper reasons, The Inspectorate postponed the inquiry.
13. Work involved in preparation was not wasted as it formed the foundation of evidence for the present inquiry. There is no evidence that work had to start from scratch. There is no evidence that the booking of hotels had resulted in any costs, and the claim that the venue had been paid for is not supported by evidence.

Reasons

14. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
15. An inquiry into appeal A was arranged to open on 21 November 2017. The Appellant has not disputed the LPA's evidence that proofs of evidence were due to be submitted by four weeks beforehand (by 24 October 2017). On 8 November 2017, The Planning Inspectorate wrote to the Appellant's agent (WS Planning & Architecture) to advise that the Inspector appointed to this case was Mr J Manning.
16. Although the Appellant's planning witness had anticipated that drainage concerns could be addressed by a condition, the LPA has made it clear that it had not withdrawn its objection, and there is nothing before me to indicate that that was not the case. Indeed, a draft statement of common ground sent to the Appellant's agent by the LPA on 8 November 2017 referred to surface water flooding in the section on drainage. Evidence on flood risk and drainage was covered in a report by Gemma Design Ltd, included at Appendix 8 to the proof of evidence of the Appellant's planning witness.
17. The letter dated 22 November 2017 from the Appellant's agent (above, para 6) explains that, following receipt of an email from the LPA after proofs of evidence had been submitted, which referred to drainage matters, efforts were made to arrange for a drainage engineer to appear at the inquiry. I have read that Gemma Design had ceased trading and that Infrastructure CS Ltd were not available. It was decided that Ms Banks, who is not a drainage engineer, should appear at the inquiry to give rebuttal evidence on behalf of the Appellant, and the Appellant's response to the costs application states that she had prepared a short proof of evidence.

18. Agreement had not been reached on drainage matters. In the absence of any communication from the LPA and the PC that they were not pursuing an objection on this ground, it was unreasonable of the Appellant not to put forward a witness, until after receipt of the LPA's email. Paragraph 16-052 of PPG gives the introduction of fresh and substantial evidence at a late stage necessitating an adjournment as an example of behaviour which may result in an award of costs against an appellant. In this case the intended appearance of Ms Banks was not announced until extremely late in the day, prompted by the knowledge that she knew the Inspector, and her intention to address drainage was not revealed until the letter of 22 November.
19. Ms Banks knew the Inspector then appointed to hold the inquiry, Mr Manning, and for this reason the inquiry was postponed. Ms Banks says in her email to The Inspectorate of 20 November 2017, the day before the inquiry was due to open, that she had only found out that morning that Mr Manning was the Inspector dealing with the appeal. However the Appellant's agent had been informed of the change of Inspector in a letter dated 8 November.
20. If timely arrangements had been made by the Appellant for the presentation of drainage evidence, I anticipate that it should have been possible to appoint a drainage specialist as was done for the inquiry which I have held into both appeals. That would have avoided the conflict of interest for the Inspector. Alternatively, if Ms Banks had been put forward as the drainage witness with a proof of evidence submitted by 24 October 2017, I would have expected her, as a member of the Appellant's team, to be aware of the appointment of Mr Manning as Inspector once this was announced on 8 November. That would have provided an opportunity for The Planning Inspectorate to allocate the case to a different inspector instead, an opportunity which did not exist the day before the inquiry was due to open.
21. The inquiry was subsequently rearranged for August 2018. I accept that the preparation undertaken for an inquiry which is postponed is unlikely to be wholly abortive. However, given the length of time to the rescheduled inquiry in August 2018, I have no doubt that it was necessary for a certain amount of re-preparation to be undertaken. The cost of the equivalent work undertaken for the 2017 inquiry was, therefore, wasted. Moreover, the LPA prepared further proofs of evidence specifically for the August 2018 inquiry concerning landscape, drainage, and planning. The cost of preparing the proofs on these subjects for the 2017 inquiry, excluding material incorporated in the subsequent proofs, was wasted. Expenditure incurred in arrangements for the 2017 inquiry, including booking hotels and the inquiry venue, and fees for the attendance of external witnesses and counsel was also wasted. I would expect the LPA to be able to substantiate any expenditure incurred on hotel accommodation and the inquiry venue.
22. The LPA's costs application was submitted at the inquiry on 26 June 2019. The Appellant should have been in a position to respond to the application on the last day of the inquiry, four months later. Accordingly, submission of final comments in written form after the inquiry had closed involved the LPA in unnecessary expense.
23. I note that the inquiry into appeal A had been arranged for several different dates. The reasons for rearrangement differ, and I am concerned with the circumstances relating to the postponement of the inquiry from November

2017. Postponements on other occasions do not justify the behaviour of the Appellant which led to the postponement of the November 2017 inquiry.

Conclusions

24. I conclude that the Appellant behaved unreasonably in putting forward Ms Banks as a drainage witness shortly before the inquiry was due to open in November 2017. This led to the postponement of the inquiry and unnecessary expenditure by the LPA in preparing parts of its evidence for the inquiry and in making arrangements for that event. I conclude that a partial award of costs is justified in respect of the unnecessary expenditure which I have identified.

Costs Order

25. 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 Mr L Wells shall pay to South Oxfordshire District Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing for the November 2017 inquiry for which equivalent preparation was undertaken for the August 2018 inquiry, preparing proofs of evidence for the November 2017 inquiry concerning landscape, drainage and planning involving material not incorporated in the subsequent proofs of evidence for the August 2018 inquiry, in making arrangements for the inquiry to take place in November 2017 including the cost of hotels and fees for external witnesses and counsel and the cost of the inquiry venue, and submitting written final comments in respect of the costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. South Oxfordshire District Council is now invited to submit to Mr L Wells, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Richard Clegg

INSPECTOR