



Costs Decision

Inquiry Held on 12 – 15 & 29 November 2019, 9 & 10 December 2019

Site visit made on 11 December 2019

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Costs application in relation to Appeal Ref: APP/J1915/W/19/3234671 Land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire SG11 2AB

- 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 Timothy Mahoney and Traveller Group for a partial award of costs against The Residents of Little Hadham (Rule 6 Party).
 - The inquiry was in connection with an appeal against the refusal of planning permission for the change of use of land to 10 pitches accommodating the siting of 10 mobile homes and stationing of 10 touring caravans and 10 utility buildings. Formation of access road and hardstandings.
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Decision

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

The submissions for Timothy Mahoney and Traveller Group

2. The submissions were made in writing and so I need not repeat them in full here. In brief, the application is made due to the introduction of two pieces of evidence; one relating to the calculation of the 85th percentile speed and secondly, the submission of a letter purported to be from the owner of the farm. It is submitted that the contents were not true and were known not to be true relating to the construction of the access to the site.

The response by The Residents of Little Hadham (Rule 6 Party)

3. The response was made in writing and so need not be repeated in full. In brief, the Rule 6 Party say in response that it was simply questioning the 85th percentile evidence which was already before the Inquiry. The Rule 6 Party was entitled to take this point without any notice. The real reason that the appellant complained about it, it is suggested, was because Mr Green's evidence came first in the relevant session; but that was due to the appellant's change of position on the access.
4. It was reasonable for the Rule 6 Party to submit the letter in response to the evidence contained in Mr Woods' rebuttal which sought to promote the third access iteration, which used the track entirely on Mr Stigwood's land. This was an entirely new point which could not have been responded to before Mr Woods' rebuttal

Reasons

5. The challenge to how the 85th percentile speed had been calculated did not form part of the case of The Residents of Little Hadham and was first raised during cross examination of Mr Green. Indeed that was the first opportunity to challenge it, other than in the rebuttals where there was no requirement to do so, as it was appended to the appellant's proof of evidence addressing highway matters. The highway concerns were raised by the Rule 6 party rather than the Council.
6. The evidence for the appellant was heard first on this topic so that the position with the access could be made clear to the Inquiry. Accordingly, this point was not raised in the examination in chief of the Rule 6 Party first. Even if that had been the case, I think it probable that the same objections would have been raised by the appellant's advocate. I have considered carefully the application and response and I am inclined to accept that the Rule 6 Party was entitled to challenge and test the evidence from which the visibility splay requirement was derived having first seen the data in the proof of evidence and underpinning the visibility splay requirements put forward by the appellant. No unreasonable behaviour occurred.
7. Added to this, there can certainly be no complaint of any procedural injustice given that the appellant's representative was given time to prepare and produce evidence in response, and the appellant's witness was recalled. Although the appellant's advocate made the case that he would be prejudiced if he could not conduct his cross examination in one chunk, thus resulting in a delay before this occurred, the adjournment was necessary in any event as the estimation of four days was woefully short.
8. I also find no unreasonable behaviour by the Rule 6 Party for submitting the letter from Mr Stigwood in response to the evidence contained in Mr Woods' rebuttal which sought to promote the third access iteration, which used the track entirely on Mr Stigwood's land. This was a new alternative access which the Rule 6 Party could not have been responded to in any way before Mr Woods' produced his rebuttal. Once this alternative was withdrawn the Rule 6 Party did not continue to rely on this letter.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

C Sherratt

INSPECTOR