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## Costs Decision

Inquiry held on 29 January 2019, 4-7, 12-14 and 27-28 February 2020

Site visit made on 7 February 2020

**by Michael Boniface MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 April 2020**

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### **Costs application in relation to Appeal Ref: APP/Y3940/W/18/3202551 Land at Purton Road, Swindon, 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).
  - The application is made by Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb for a partial award of costs against Wiltshire Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for "up to 81 dwellings and associated infrastructure".
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### **Decision**

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

#### **The submissions for Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb**

2. The application for costs was made in writing. In summary, it is said that the Council introduced a new issue very shortly before the Inquiry opened, that being the adequacy of ecological survey work and reports. This necessitated additional seasonal survey work that could not be undertaken before the Inquiry opened or for some time afterwards. This prolonged the appeal proceedings and required significant additional work on behalf of the appellant. This included new ecological surveys and the updating of previous surveys; a new ecology proof of evidence; a wasted first day to the inquiry; the need for new housing land supply evidence given the intervening time; new planning evidence; updates to the Statement of Common Ground and fresh instructions for professional experts. The issues had not been raised in the Council's decision or subsequent statements but should and could have been.

#### **The response by Wiltshire Council**

3. The Council's response was made in writing. In summary, it is said that concerns were raised throughout the lengthy pre-application process, in responses from the Council's Ecologist, in the Officer's Report, in the appeal statement and in other correspondence. In this context, the Council's concerns cannot have come as a surprise to the appellant, who should have had regard to all the information available and the discussions had with the Council leading up to its decision. These specifically raised a concern about the apparent undervaluing of the County Wildlife Site (CWS). It was not unreasonable to pursue such concerns, which had gone unanswered by the appellant. The Council was content to proceed with the Inquiry based on the information available. It was in fact the appellant that considered an adjournment was

necessary for it to produce additional evidence. This could have been provided long before.

### **Reasons**

4. 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.
5. There has been a great deal of discussion between the parties in this case, evidenced in the e-mail trails and extracts provided to me. It is also very clear that these discussions have not always been in a positive spirit with the aim of narrowing or resolving issues. This is unfortunate as it might have allowed the appeal to be resolved more quickly.
6. I have had regard to the various documents provided by the Council, which do indeed identify ecology concerns raised over a long period of time leading up to the Council's refusal of planning permission, which included ecology concerns within reason for refusal 3. The fact that concerns existed must have been entirely clear to the appellant, but it is the scope of those concerns and the suggested inadequacy of the information that was not clear, and which led to the need for an adjournment.
7. References to undervaluing the CWS are numerous but little information was available to explain why the Council thought this was so or what evidence could be provided to justify the appellant's position. It was not until the exchange of proofs, very close to the Inquiry opening, that the numerous and detailed concerns were eventually clarified. At this point, there was no time (given the seasonal nature of the surveys involved) to undertake the necessary survey works in advance of the Inquiry.
8. There is a requirement for the Council to set out its reasons for refusal clearly and fully. I accept that the officer's report on the application and preceding discussions are also informative and should be taken into account. However, the Council's concerns were expressed vaguely throughout, with little opportunity for the appellant to establish exactly what was needed to overcome its concerns.
9. The appellant could not have anticipated the need for further extensive survey works until it was too late. This necessitated an adjournment and the production of evidence to meet the newly defined concerns of the Council.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs 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 Wiltshire Council shall pay to Beechcroft Land Ltd, John Webb, Sally Ballard, Carole Ann Lindsey and Deborah Muriel Webb, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred after 3 January 2019 in preparing new ecological surveys and the updating of previous surveys; a new ecology proof of evidence; a wasted first

day to the inquiry; new housing land supply evidence; new planning evidence; updates to the Statement of Common Ground and fresh instructions for professional experts; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Wiltshire 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.

*Michael Boniface*

INSPECTOR