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## Costs Decision

Inquiry Held on 24-26 November 2020

Site visit made on 27 November 2020

**by Paul Singleton BSc MA MRTPI**

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

**Decision date: 9<sup>th</sup> December 2020**

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### **Costs application in relation to Appeal Ref: APP/F1610/W/20/3248674 Scrap Haulage Yard, Fosseway, Lower Slaughter GL54 2EY**

- 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 Mr Peter Gilder for a full award of costs against Cotswold District Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for redevelopment of existing scrap yard and haulage depot to create electric car charging service station and associated works.
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### **Decision**

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

### **The submissions for Mr Gilder**

2. The application seeks a full award of costs on the grounds that the appeal should not have been necessary because the refusal of planning permission was substantively unreasonable. The Council now accepts that the proposal complies with the development plan and, as the development plan is unchanged since the application was refused, it should have reached that conclusion when determining the application. It was for the Council to assess the proposal's compliance with the development plan and it is no excuse that it relied upon the advice and recommendation of Gloucestershire County Council (GCC) as local highway authority. That advice has subsequently been abandoned by GCC and was, itself, unreasonable.

### **The response by Cotswold District Council**

3. GCC unequivocally recommended that the application be refused and it was wholly appropriate for the Council to give considerable weight to GCC's advice as the statutory consultee with its particular area of statutory responsibility and expertise. In line with the High Court judgment in *Shadwell Estates*,<sup>1</sup> the Council was obliged to follow that advice unless clear and compelling reasons could be demonstrated for diverging from it. When making its decision the Council could not reasonably have expected that GCC would alter its advice and withdraw its objection. However, having received notification of that change in GCC's position, the Council acted as promptly as possible to report this to the

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<sup>1</sup> *Shadwell Estates v Breckland DC* [2013] EWHC 12 (Admin)

relevant Committee and to pass a resolution that it would not defend the reason for refusal at the appeal inquiry.

## Reasons

4. Planning Practice Guidance (PPG) advises that costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be made on the basis of procedural, relating to process, or substantive grounds, relating to the issues arising in the appeal.
5. I agree with the Council that it was both entitled to and obliged to place considerable weight on the advice and recommendation of GCC that permission should be refused. GCC is the local authority with statutory responsibility for the Local Transport Plan and for setting the strategy for highway management and transport infrastructure. A proposal for a large scale and innovative addition to that transport infrastructure clearly falls within the scope of GCC's statutory role and the Council was entitled to place reliance upon GCC's knowledge and expertise in this area. In relation to this point, I note that GCC's advice that the proposal should be opposed was not a 'one off' piece of advice but was maintained over a considerable period of time, notwithstanding GCC's review and appraisal of the additional information submitted by Mr Gilder prior to the application being reported to Committee.
6. For the reasons set out in the appeal decision, I have found that there is no conflict with Policy INF10 of the Cotswolds Local Plan. I have reached that conclusion on the basis of the updated information presented at Inquiry, including that regarding what renewable energy provision is to be incorporated within the development and the contribution this might make to the development's electricity requirements. That information was not available to the Council at the time the application was determined. The Council's reason for refusal was also founded on alleged conflict with a number of transport related policies in the National Planning Policy Framework. Again, as these matters were within the purview of GCC's statutory role and expertise, I consider it was reasonable for the Council to have relied upon GCC's advice as to whether the proposal complies or conflicts with those policies.
7. The applicant referred to the Shadwell Estates<sup>2</sup> case in closing submissions. He urged that I should place considerable weight on the highway authority's updated advice that there are no highway or transport objections to the proposal. Given those submissions, there is, in my view, some degree of inconsistency in the applicant asserting that the Council should not have placed considerable weight on the advice it was given by GCC at the time the application was determined. Having regard to that case law, the Council was obliged to follow that advice unless there were clear and compelling reasons not to do so. No such reasons were identified at the time that the Council made its decision.
8. The Council could not reasonably have anticipated the change in stance by GCC following the lodging of the appeal. Given how significant a change that was, it was appropriate for the Council to consider whether its reason for refusal could be defended by an external transport consultant. Having concluded that it could not, the Council acted promptly to pass its resolution not to defend the

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<sup>2</sup> Shadwell Estates v Breckland DC [2013] EWHC 12 Admin paragraph 73

reason for refusal and to communicate that decision to the applicant and the Planning Inspectorate.

9. I have reviewed the costs decision by Inspector Hockenhull in the South Oxfordshire appeal appended to Mr Gilder's costs application. I do not consider that this sets a precedent for an award to be made in the present case. In that case the Council's decision to refuse permission was against its officers' recommendation and does not appear to have related to the advice and recommendation of a statutory consultee. It was, therefore, open to the Council to review its position at any time following the lodging of the appeal but it only did so at a late stage, some 10 days before evidence was due to be exchanged. In the present case, the Council was not made aware of GCC's revised position until the middle of June. At that point it took the appropriate action to advise the elected members of this changed position as quickly as possible. The ensuing resolution not to defend the refusal was taken without any delay and was quickly communicated to the applicant.
10. It is also pertinent to note that the applicant requested that the appeal be dealt with by means of an inquiry so that the evidence relating to the proposal could properly be tested. Following the Council's decision not to defend its reason for refusal I considered that, in view of the substantial public interest in and opposition to the proposal, it remained appropriate that the evidence should be tested at an inquiry.
11. I note the applicant's suggestion that GCC could be joined in the appeal so that an award could be made against them. I see no reasonable grounds for taking that action. The change in GCC's position followed its receipt and review of additional information provided by the applicant in relation to some of the key concerns that it had raised. Having concluded that it should no longer maintain its objection on highway grounds, GCC notified the Council of that changed stance at the earliest possible opportunity in accordance with the guidance within paragraph 055 of the PPG. Having done so, GCC has not sought to sustain any objection or concerns about the proposal and has not taken part in the appeal.
12. For this reasons I find that there has been no unreasonable behaviour on the part of the District Council and conclude that the application should be refused.

*Paul Singleton*

INSPECTOR