



Costs Decision

Inquiry Held on 21–24 July 2020 & 30–31 July 2020

Site visit made on 16 July 2020

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2021

Costs application in relation to Appeal Ref: APP/C1570/W/19/3241526 Warehouse at Elizabeth Way, Saffron Walden, CB10 2BL

- 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 HHGL for a partial award of costs against Charterhouse Property Group Ltd.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of the existing warehouse and redevelopment of the site to provide a replacement care home (Use Class C2) together with associated car parking, landscaping and amenity space.
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Decision

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

The submissions for HHGL (Rule 6 Party)¹

2. The submission was made in writing, including a rebuttal to the Appellant's response, and expanded upon orally. Put simply, the Rule 6 Party considers that the Appellant acted unreasonably in advancing a highly detailed and technical challenge to the data in the Uttlesford Retail Capacity Study (July 2016) and the Retail Study Update (2018). This is on the basis that it formed no part of its original application submission and not was not raised properly in the statement of case at the start of the appeal process. As such they are seeking the costs associated with instructing the specialist consultant to address this matter.

The response by Charterhouse Property Group (The Appellant)

3. The response was made in writing and expanded on orally. In short the Appellant considers that Homebase would have commissioned an independent audit to review the basis for the corrections made to the Savills Report at whatever point in the appeal process those corrections had been produced. Moreover, the Appellant is clear that the errors in the report were not attributable to them and that Homebase did not dispute that the errors were correctly identified.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party

¹ Reference to paragraphs 30, 32, 52 of the Planning Practice Guidance

- applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The same guidance makes it clear that it is necessary for parties to follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. If they have failed to do so they are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal or the procedure of the appeal. Failing to produce evidence to substantiate a reason for refusal on appeal, or making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, are cited as examples.
 6. The Rule 6 Party's application is on the basis that the Appellant acted unreasonably by advancing a detailed and technical challenge to the data in the Uttlesford Retail Capacity Study (July 2016) and the Retail Study Update (2018).
 7. The first issue raised is that the documents supporting the planning application did not contain any challenge to the retail studies. The Appellant's position is that they did not consider that the studies would in fact have a significant bearing on the scheme applied for. This was due to the fact that pre application and at application stage the Council's Officers had indicated that the scheme would be supported in principle². It is submitted that the point at which the Appellant was aware there was a change in position was at the point that the application was determined.
 8. The submitted chronology sets out that the Appellant embarked on consideration of the studies at the point the application was determined and the Council's reason for refusal was known. I also note the point made by the Appellant that the reports are long and detailed. In addition, the Appellant considers that they did attempt to address the discrepancies within the reports. The reports were commissioned by the Council and therefore the authors of the reports would not speak directly to the Appellant. They also suggest that the Council would have been expected to check the reports.
 9. In this context, I do not consider that the fact that the statement of case was the first reference to any issues regarding the studies, is in fact unreasonable. The statement of case³ makes it clear that the Appellant would be producing evidence regarding the studies as part of the inquiry and makes reference to specific areas of the documents. As such I am of the view that the Appellant did signpost these issues within the statement of case, which itself clearly identified the main arguments and did not present new evidence as the Rule 6 Party submits.
 10. The Rule 6 Party considers that the proofs of evidence were the first point where the Appellant's retail witness⁴ submitted that there were in fact a number of errors with the studies. However, the statement of case made it clear that there were errors and it is clear from the correspondence submitted by the Appellant⁵ that attempts were made to engage with the Council's consultants. The Appellant's statement of case was ultimately a response to

² Pre application letter - Appendix A of the Appellant's Planning Statement

³ Annex J to the procedural guide for appeals references J.1.1, J.2.2, J.2.3

⁴ Mr Best

⁵ Letter dated 4 March 2020

the Council's decision on the application. The reasons for refusal were known to the Rule 6 Party from the outset of the appeal process. In addition, they also had access to the statement of case of both the Council and the Appellant.

11. The Appellant explained that they thought that the scheme would be approved by the Council. In this regard they explained why the retail studies were raised in the statement of case and proofs when they were not raised in the application submission. Therefore, I do not consider that their approach to the documents was inherently unreasonable. Following the Council's decision and the subsequent reasons for refusal it is clear that further work was undertaken to respond through the statement of case and then the proofs of evidence.
12. I understand that it would have assisted the Rule 6 Party to understand the Appellant's position in more detail. However, the concerns were signposted and, overall, I do not think it is fair to describe Mr Best's proof of evidence as an ambush.
13. Ultimately, the Rule 6 Party was aware from an early stage, from the statement of case and decision notice, that there would be an issue in relation to comparison goods floor space. As such if the Rule 6 Party wanted to advance an argument on comparison goods floor space then they would have known that a specialist consultant would be required from an early stage. Therefore, whilst I appreciate that the Rule 6 Party decided to appoint RPS, this did not arise directly from the Appellant's acting unreasonably or actively misleading them.
14. The corrections to the retail studies were the responsibility of Savills, a point which is not in dispute. In addition, the Inquiry heard that, at whatever point the errors were discovered, the Rule 6 Party would have commissioned an independent review to assure itself of the changes made. In this regard the chronology of the Appellant's documents did not directly lead to the need for the Rule 6 Party to appoint RPS as it seems likely that this would have occurred in any event.
15. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the application for an award of costs.

D J Board
INSPECTOR