
Costs Decision

Inquiry opened on 27 November 2018

Site visits made on 7 July 2021

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 10 August 2021

Costs application in relation to Appeal Ref: APP/X4725/W/17/3192150 Land at Castle Gate, Stanley, Wakefield, LS26 8HH

- 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 Wakefield Council for a partial award of costs against Mr T Spaven.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as 'change of use to six traveller pitches and associated works including six mobile homes, six day-rooms, six touring caravans, a stable block and hardstanding'.
 - The inquiry sat for seven days; 27 November 2018, 29 June – 2 July, and 6 & 7 July 2021.
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Decision

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

Procedural matters

2. The main parties agreed that the proposal should be described as *the change of use to six traveller pitches and associated works including six day-rooms, and hardstanding*.
3. At the inquiry dates in 2021, the appeal (appeal A) was considered together with an appeal for an alternative scheme for six gypsy pitches on the site (appeal B). The costs application concerns appeal A alone.

The submissions for Wakefield Council

4. The application was made in writing (Document L9), with final comments made orally at the inquiry. The gist of the submissions is as follows. Planning Practice Guidance (PPG, at paragraph 16-041) gives an unnecessary adjournment caused by the unreasonable behaviour of one of the parties as an example of a situation which may justify a partial award of costs. The planning application relating to appeal A was determined on the basis of the scheme shown on the proposed site plan reference TDA.2116.02 revision H, and evidence for the appeal was prepared on the same basis. Shortly before proofs of evidence were due for submission, the Appellant indicated his intention to pursue the appeal on the basis of site plan reference TDA.2116.02 revision I.
5. On the opening day of the inquiry, the Appellant requested the substitution of the revision H plan by revision I. This revision involved material changes concerning bunding, retaining walls and fencing, which had implications for the

reasons for refusal relating to Green Belt and noise. The revision had not been considered by the Planning Committee, had not been the subject of consultation, and had not been addressed in the Local Planning Authority's (LPA's) evidence. Accordingly the LPA requested an adjournment, which was granted. It was unreasonable to seek to substitute a materially different scheme at such a late stage. Revision H had been determined and was subject to appeal. It was not for the LPA to consult on a possible substitution. The Appellant could have sought to substitute revision I in advance of the inquiry, but did not do so.

6. The Inspector indicated that, following consultation, the inquiry was to consider revision I, and the LPA consulted upon this proposal and prepared fresh evidence. However the Appellant produced revision J, involving the replacement of the bunds with acoustic fencing on top by acoustic fencing of equivalent height. That was additional unreasonable conduct.
7. The adjournment on day 1 caused the LPA wasted expense in preparation and attendance costs. Further wasted costs were incurred in the preparation of evidence in relation to the revision I scheme. There were material differences between revisions H, I and J, and it was necessary to update the proofs. The application is made on procedural grounds whereas the Appellant's arguments relate to a large extent to the merits of the case. The principle of a partial award of costs is sought, not assessment of the amount.

The response on behalf of Mr T Spaven

8. The response to the costs application was made in writing (Document A33), supplemented by oral comments at the inquiry. The gist of the response is as follows. There was a dialogue between the LPA's noise witness and the Appellant's former noise witness which led to revision I; the Appellant wished to meet concerns which had been raised, and the draft noise statement of common ground in November 2018 referred to revision I. The LPA's noise witness should have advised that sufficient noise attenuation was provided by revision I, which would have led to reconsideration following consultation, and the need for adjournment being averted. Having regard to the evidence concerning internal noise levels, the work sought, involving increasing the height of the barrier and the subsequent revision J, was misconceived.
9. On receipt of revision I, on 12 October 2018, the LPA should have undertaken consultation and called for an adjournment. The inquiry would have been adjourned without anyone needing to turn up. The LPA's proofs should have referred to revision I, since it had been submitted in time for that to be done. Prior to the refusal of planning permission, it had been agreed that noise concerns could be addressed by conditions, but the report to the Planning Committee did not provide the information that acceptable noise levels could be obtained with compensatory measures in place. As the LPA rejected the application on an unsound basis, the case for recovering the costs of preparing a second set of proofs is undermined.
10. Only the proofs prepared in 2018 and for the 2021 inquiry dates have been seen. The content of the first proofs was used in the second set, which was required anyway. Two appeals required two sets of proofs, and the second appeal came about because of the revision introduced in December 2018 to meet the concerns of the LPA's noise witness. Consideration of the proposal had not involved reliance on the impact on the landscape. The claim in relation

to additional time involved in preparing proofs could only really concern noise; there is similarity in content there, and the first proof should have stated that revision I provided sufficient attenuation. There were extenuating circumstances since matters relied on by the LPA had not been raised earlier.

11. If the LPA had recognised the merit in scheme A and anticipated the adjournment decision, the Appellant would have been told that consultation would take place.
12. The Appellant acted reasonably in trying to meet the LPA's concerns. Ongoing discussions were expected in procedural guidance, and the Appellant had worked to make the scheme acceptable to the LPA. The adjournment countenanced the appeal going forward on the basis of revision I. It was wrong of the LPA to insist that withdrawal of the appeal and a fresh application was the only way that the Appellant could rely on this revision. The costs of the adjournment are subject to the LPA's duty to assist The Planning Inspectorate by averting an ineffective inquiry.
13. In response to the Appellant's request, the LPA has advised of a level of costs which is unreasonable.

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. Paragraph 16-051 of PPG makes clear that awards of costs against appellants may be either procedural in regard to behaviour concerning the appeal process or substantive concerning the planning merits of the appeal. The LPA's application is made on procedural grounds, and it is these matters which I address in this decision. In accordance with paragraph 16-027 of PPG, however, the actual amount of costs sought is not a matter for this decision.

Revision I and adjournment of the inquiry

16. Planning permission was refused on the basis of the scheme shown on the proposed site layout revision H. That drawing shows a 1.8m high acoustic fence along the northern boundary of the site with the M62 motorway (but not extending past the play area), 1.2m high post and rail fences along the western and eastern sides of the site, and a 1.8m high close-boarded fence along the frontage to Castle Gate (excluding the play area). There was discussion between the main parties concerning the implications of noise and the appropriateness of mitigation measures. The Appellant proposed a higher 2.8m barrier along the northern side of the site, and the LPA referred to this in both its statement of case and its proofs of evidence for the inquiry in 2018.
17. Revision I was prepared for the Appellant in advance of the inquiry and it was received by the LPA on 12 October 2018. This version of the site plan included a 2.8m bund and fence along the whole of the northern boundary. It also included a 2.8m bund and fence along the western and eastern sides of the site, retaining walls on the northern side of the internal access road, and a 2m fence along the whole of the site frontage. The Appellant's evidence was prepared on the basis of revision I, and it was suggested that the amendments being proposed could be the subject of conditions.

18. Whilst the LPA had been aware of the intention to increase the height of the barrier on the northern side of the site to 2.8m, it otherwise prepared its evidence on the basis of revision H. Although local residents and Stanley Residents Group became aware of the revision shortly before the inquiry opened, there is no indication that they were formally consulted, and concern was expressed about the change to the scheme at that stage¹.
19. On the opening day of the inquiry, I heard submissions from the main parties on the question of proceeding with the appeal on the basis of revision I. The starting point for a scheme at appeal is that the proposal should essentially be that which was considered by the local planning authority, and on which interested parties have had the opportunity to comment. Whilst there are occasions when amendments are appropriate, in accordance with the judgement in *Bernard Wheatcroft v SSE*, the development should not be so changed that to grant it would have deprived those who should have been consulted of the opportunity of consultation.
20. My view was that the revision involved substantial changes which should have been the subject of consultation. To proceed then would have prejudiced the interests of other parties. Neither of the main parties wished to return to scheme H, and the inquiry was adjourned, before any evidence was heard, to enable consultation to take place on the scheme in revision I.
21. 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 give rise to a procedural award against an appellant. That is the situation which arose in this case. Notwithstanding the discussions which had been taking place between the main parties concerning noise, revision I was introduced only just over six weeks before the inquiry was due to open, and only just over three weeks before the date by which proofs of evidence were due to be submitted. That was far too late a stage to countenance the extent of changes between the scheme considered by the LPA and revision I, taking account also of the legitimate interests of other parties.
22. Adjournment of the inquiry on the opening day was a result of the Appellant's unreasonable behaviour in putting forward revision I at a late stage in the appeal process. That caused the LPA unnecessary expense in attendance at the inquiry on the opening day. Insofar as preparation is concerned, I accept that the work undertaken was not wholly abortive. However it was necessary for evidence to be reviewed and to address the specific nature of revision I, and the cost of the equivalent work in respect of revision H was wasted. The Appellant argued that two appeals would be expected to involve two sets of proofs, but at the stage when work was being undertaken in respect of revision I, the application which led to appeal B had not even been submitted.

Revision J and additional proofs

23. When the inquiry was adjourned, it was expected that it would be resumed on 1 May 2019, and it was agreed that revised proofs of evidence would be submitted by 23 April 2019 to address the amended scheme shown in revision I. The LPA submitted an updated proof of evidence from its planning witness and an addendum to the 2018 proof of evidence of its noise witness on 23 April 2019. It was claimed, on behalf of the Appellant, that these documents had

¹ See Mr & Mrs Ineson's and Stanley Residents Group's emails of 16 November 2018 to The Planning Inspectorate.

not been seen. At about this time the Appellant was in the process of changing his agent, and I note that the LPA's email of 23 April 2019 stated that the evidence would be forwarded to the Appellant as they had not been advised of the details of the new agent.

24. At the case management conference held on 16 June 2020, the Appellant's representatives proposed removal of the bund on the northern boundary of the site to address views which had been expressed by Highways England. I agreed that this would not be inappropriate, and a revised plan (Green Planning Studio ref 19_1011_003 revision J) was submitted, which involved the replacement of the bunds and the acoustic fencing on top, by acoustic fencing of equivalent height on the western, northern and eastern sides of the site. This plan was the subject of consultation, and at the case management conference on 14 April 2021, the LPA explained that it was in a position to proceed on the basis of revision J. Subsequently revision K was submitted, which simply correctly shows some existing fencing, and which did not alter the proposed scheme shown in revision J. This scheme was the subject of the evidence for appeal A prepared by both main parties for resumption of the inquiry in 2021.
25. I acknowledge that some additional work would have been involved for the LPA in preparing a third set of proofs. However the change involved in revision J was put forward to address a concern raised by Highways England, and, importantly, simply involved a change in the form of the 2.8m barrier at the site. It was raised in the forum of a case management conference, rather than being submitted unilaterally, with the revised plan being submitted well in advance of the date for resumption of the inquiry: I do not consider that the Appellant behaved unreasonably in putting this revision forward.

Conclusions

26. I conclude that the Appellant behaved unreasonably in putting forward revision I at a late stage in the appeal process. This led to the adjournment of the inquiry and unnecessary expenditure by the LPA in attendance at the inquiry on the opening day and in preparing parts of its evidence relating to revision H. I conclude that a partial award of costs is justified in respect of the unnecessary expenditure which I have identified

Costs Order

27. 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 T Spaven shall pay to Wakefield Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in attendance on the first day of the inquiry and in preparing that evidence to address revision H which was superseded by equivalent preparation in respect of revision I; such costs to be assessed in the Senior Courts Costs Office if not agreed.

28. Wakefield Council is now invited to submit to Mr T Spaven, to whose agent 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