
Costs Decision

Inquiry held on 6 and 7 July and 16, 17 and 18 November 2021

Site visits made on 28 June and 17 November 2021

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Costs application in relation to Appeal Ref: APP/N0410/W/21/3270138 The Lea, Western Avenue, Denham UB9 4NA

- 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 Buckinghamshire Council for a partial award of costs against Anoopam Mission.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a crematorium, dining hall and widening of access road with associated landscape and biodiversity enhancements.
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Decision

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

The submissions for Buckinghamshire Council

2. The appeal was originally due to be heard by way of a virtual inquiry commencing on 6 July 2021. On 2 July 2021, the Appellant wrote to the Planning Inspectorate to explain that, due to an oversight, one of the freehold owners of part of the appeal site had only recently been notified of the planning appeal. As a result of the Appellant's failure to serve notice of the application on these parties in sufficient time, the appeal was adjourned to re-commence on 16 November 2021.
3. The failure to serve notice and comply with relevant deadlines was the responsibility of the Appellant.
4. The Council submits that:
 - (a) The Appellant acted unreasonably by failing to serve notice of the application on the owners of freehold land between Denham Court Road and the land comprising the Appellant's existing temple and crematorium, over which the Appellant benefits from rights of way, until 28 June 2021 and 1 July 2021. This late service provided inadequate opportunity for the freehold landowner to make representations or objections and led to the adjournment of the inquiry.
 - (b) As a result of the Appellant's unreasonable behaviour, the Council has incurred unnecessary expense in preparing for the adjourned inquiry. The inquiry was adjourned after it had been opened. Attendance was required on both days 1 and 2 of the inquiry. The inquiry is now anticipated to run for a further four days. The Council was ready to proceed on day 1. The adjournment has led to the Council incurring additional costs by virtue of the time required to repeat preparation

work, and taking into account new evidence which has arisen following the original inquiry dates, and through attending on six inquiry days. Further, the Council will incur additional costs by virtue of the adjourned inquiry being held in-person which would not have been incurred if the inquiry were heard remotely, as planned, in July 2021.

5. Therefore, the Council submits that it has been put to unnecessary and wasted expense in relation to the appeal due to the Appellant's unreasonable behaviour.
6. The application is for a partial award of costs relating to the additional costs resulting only from the adjournment of the inquiry.

The response by Anoopam Mission

7. This is the Appellant's Response to the Council's application for a partial award of costs in light of the adjournment from the virtual inquiry which opened on 6 July 2021. This application is defended by the Appellant in full.
8. The Council allege that the Appellant acted unreasonably by failing to serve formal Notice of the application /appeal on the owners of freehold land between Denham Court Road and the land comprising the Appellant's existing temple and crematorium (over which the Appellant benefits from the rights of way). Whilst this related to the giving of formal Notice of the proposal to GKN, neither GKN (nor Boyer) have sought to appear before the inquiry. That could have given rise to no increased inquiry time.
9. Moreover, with regard to Boyer's objection, the documents of title submitted in support of the Section 106 Agreement demonstrate the entitlement to construct, and thereafter maintain, the new access road to Denham Court Drive. No issue remains in this regard, and whilst the Appellants acknowledge the lateness of the Notice, no party has been prejudiced and no further expense incurred as no new issue has arisen.
10. Accordingly, the Appellant refutes that this has given rise to any, or any meaningful, additional cost. The preparation work would have been minimal – no witnesses were called and so no rehearsing of evidence was required in July. The issues were raised at the earliest possible opportunity, before the opening of the inquiry.
11. In addition, no further evidence has been produced other than to respond to matters raised by Mr Smith on the availability of alternative sites. The submission by Mr Sweeney was expressly considered by PINS' Helen Skinner, in her email of 12 November 2021 at 10:50, to not be "new evidence". She stated that:
"The Inspector has accepted this document - it's the appellant's reply to the Council's evidence, the Council will have chance to assess it prior to resuming on Tuesday, and the opportunity to question on it during cross examination."
12. The extensive work of Mr Sweeney on this issue assisted in narrowing the issues to be discussed in the planning evidence, and saved inquiry time both in the evidence of Mr Smith and Mr Regan. In part, this resulted in the Council advancing no planning evidence which contradicted the Appellant's case. In consequence, there has not been a prolongation of the inquiry sitting time, due to the adjournment.

13. Moreover, no additional costs can reasonably be incurred through the hearing of the inquiry in-person rather than remotely. That was at the request of the Inspector (and not the Appellant) and would have been an expense incurred in the ordinary course of proceedings in any event.
14. The Council's application is without merit. Accordingly, the Inspector is invited to dismiss the application.

The final response by Buckinghamshire Council

15. The response does not contest that the failure to serve notice on time was unreasonable. The appellants acknowledge the lateness of the notice. Requirement 1 for a costs award is made out.
16. The response does not contest that the late service of the notice caused the adjournment. The only outstanding question is whether the adjournment caused unnecessary expenses.
17. Unnecessary and additional costs evidence occurred as a result of the adjournment. The response focusses on inquiry time, which is not the issue. The issue is the additional costs identified at paragraph 4. (b) of the Council's submissions, amounting to preparatory work, new evidence, and costs associated with the event being in person.
 - (c) Preparatory time – preparation time has been duplicated and we all had to get back up to speed after a 5 month delay. That does carry additional costs.
 - (d) There was also time spent reviewing material that was not available at 2 July and this was additional work. That time should be included within a costs award on the basis it was unnecessary had the event continued 2 July.
 - (e) The in person event was not because of the Inspector's request. If the event continued as planned in July, it would have been virtual and had it not been for the unreasonable behaviour of the appellant, the costs would not have been incurred.

Reasons

18. The Planning Practice Guidance (PPG) 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. Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process.
19. The PPG says the aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
20. The failure of the appellant to notify the landowners prior to the Inquiry did not provide sufficient time for them to make representations. This was the only reason for the adjournment. Whilst it may have been an oversight and was raised at the earliest opportunity, this constitutes unreasonable behaviour as there was a failure to comply with the requirements of the appeals process and this did not follow good practice in relation to timeliness.

21. In terms of wasted or unnecessary expenses, there has been a requirement to re-prepare for the resumed Inquiry in November given the passage of time since July. This is an unnecessary cost that would not have arisen had the Inquiry proceeded as planned.
22. The costs associated with holding the event in person, as opposed to virtual, were also unnecessary. Whilst the procedure at the earlier stage was to hold virtual events owing to the Covid-19 pandemic, this had reverted to physical events, and these costs would have been avoided had the Inquiry proceeded in July.
23. However, the Council has not incurred wasted expenses from additional sitting days. This is because the Inquiry was originally scheduled to run for 4 days with a reserve day on 13 July in case of overrun, amounting to 5 days. The Inquiry sat for 2 days in July, and then 3 days in November, amounting to 5 days.
24. Lastly, whilst new evidence was submitted, this was a modest amount and in response to the Council's need evidence with the aim of shortening Inquiry time. I do not consider that this created an additional expense on top of the re-preparation costs, and even if it did, these costs would have been de minimis.

Costs Order

25. 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 Anoopam Mission shall pay to Buckinghamshire Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the adjournment of the Inquiry from the repeat preparatory work and the costs associated with holding a physical event; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Anoopam Mission, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Katie McDonald

INSPECTOR