The Planning Inspectorate

Costs Decision

Inquiry Opened on 15 June 2021

Site visits made on 10 June, 16 September, and 17 September 2021

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 24th January 2022

Costs application in relation to Appeal Ref: APP/U3935/W/21/3269667 Inlands Farm, The Marsh, Wanborough, Swindon SN4 0AS

- 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 Swindon Borough Council for a full, or failing that a partial, award of costs against Wasdell Properties Ltd.
- The Inquiry was in connection with an appeal against the refusal of planning permission for a hybrid planning application for a Science Park and associated works to include full details of 33,507 square metres (GIA) of Use Class B1c (light industrial), with associated access, parking, landscaping, and drainage, and an outline proposal for up to 32,281 square metres (GIA) of Use Class B1b (research and development) and up to 16,400 square metres B1c (light industrial), with associated access, parking, landscaping, and drainage (all matters reserved).

Decision

1. The application for a full, or failing that, a partial, award of costs is refused.

The submissions for the Council

2. These were made in writing during the Inquiry[1].

The response by the appellant

3. This was made in writing during the Inquiry[2].

Reasons

4. Planning Practice Guidance[3] tells us that in general, parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. The aim of the costs regime, amongst other things, is to encourage all those involved in the appeal process to behave in a reasonable way, and follow good practice.

5. The PPG gives examples of unreasonable behaviour which may result in an award of costs against an appellant. A procedural award may be made where (and the list is not exhaustive) there has been: resistance to, or lack of co-

[1] ID65
[2] ID66
[3] Referred to hereafter as PPG

operation with the other party or parties in providing information, or in discussing the application or appeal; delay in providing information or other failure to adhere to deadlines; only supplying relevant information at appeal when it was requested, but not provided, at application stage; the introduction of fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and deliberate concealment of relevant evidence at planning application stage or at a subsequent appeal.

6. In terms of substantive awards, the PPG makes clear that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. This may occur where the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.

7. The Council also highlights advice in the PPG on potential awards of costs against local planning authorities and in particular the example of 'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis', and 'acting contrary to, or not following, well-established case law', suggesting that there must be parity of reasoning when considering the behaviour of appellants.

8. The application for a full award of costs rests on the suggestion that the appeal had no real prospect of success. It is said that the scheme is acknowledged to be contrary to the development plan and no material considerations, supported by adequate evidence, have been advanced to indicate that a decision contrary to the development plan should have been reached.

9. In the first instance, there is nothing inherently unreasonable about an appellant pursuing a proposal that is contrary to the development plan. I say that because s.38(6) of the Planning and Compulsory Purchase Act 2004 specifically acknowledges that 'other material considerations' might be sufficient to override a failure to accord with the development plan.

10. That said, if the 'other material considerations' route is to be pursued by an appellant, then I agree that these must be substantive, and backed by evidence. Notwithstanding the criticisms made about the appellant's economic evidence, by the Council, and others, there is nevertheless, an acceptance that the proposal would bring forward significant economic benefits. In that context, it cannot fairly be said that the case presented by the appellant was hopeless.

11. In my parallel appeal decision, I have found that those economic benefits taken at their highest are not sufficient to outweigh the harm that would be caused to the character and appearance of the area, the valued landscape, the setting of the AONB, and the setting and thereby the significance of a range of designated heritage assets. As I have set out, that is a matter of judgment. That I have agreed with the Council on the overall balance does not mean that the appellant was unreasonable in seeking to test the matter at appeal, or that the appeal had no reasonable prospect of success. I believe that there was sufficient strength in the case advanced by the appellant to suggest that another decision-maker might not have reached the same conclusion as I have, necessarily.

12. Turning then to the applications for partial awards of costs, in dealing with the planning balance, the appellant may have erred in attaching 'moderate' rather than 'great' weight to the heritage harms identified. However, the matter was ably addressed in considering the evidence and the point did not prolong proceedings to any significant degree. If there was unreasonableness in the actions of the appellant on this matter, it did not lead to unnecessary or wasted expense in the overall process.

13. The points raised about the correct Use Class of what is proposed were, if I may say, misdirected. It is very plain that what was applied for was in Use Classes B1c (light industrial) and B1b (research and development)[4] rather than B8 (storage or distribution). As I have set out in my parallel appeal decision, if Phase 1 was granted permission and implemented, then the appellant would have to operate within the bounds of that grant of permission or the Council could take enforcement action. I do not consider that the appellant has sought to achieve a permission for a storage or distribution use by stealth. They have not acted unreasonably in this regard.

14. In terms of the Wilts and Berks Canal, viewed in the round, I have concluded in my parallel appeal decision that the approach taken by the appellant to it would be a benefit of the scheme. There is nothing in their actions that could be described as unreasonable.

15. Issues around water quality proved complex I admit. However, the approach of the appellant to the issue did not lead to the adjournment – there were other factors too, notably the issues around highways. Discussions between the appellant and the Environment Agency on water quality seemed to me to have been fruitful – the upshot was that on this issue, despite some areas of dispute, the scheme could have been permitted subject to Grampian conditions. In that overall context, I do not consider the actions of the appellant to have been unreasonable.

16. Archaeology is another aspect that was, I believe, afforded undue prominence. Of course, the remains of the Roman farmstead are very important but the simple fact is that the layout of the area of the appeal site where they are located is not at issue – if outline planning permission was granted for Phase 2, then the layout of this part of the overall site would be subject to reserved matters. That would be the proper time to conduct the debate on whether the remains should be retained below pasture, or a car park. The appellant has not acted unreasonably in this regard.

17. Bringing all those points together, unreasonable behaviour that has directly caused another party to incur unnecessary or wasted expense in the appeals process has not been demonstrated. I see no justification for a full, or indeed partial, award of costs against the appellant.

Paul Griffiths

INSPECTOR

[4] Now both in Use Class E