



Costs Decisions

Inquiry held on 16-19, 23-26 November and 6 December 2021

Site visit made on 25 November 2021

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2022

Costs applications (A), (B), (C) and (D) in relation to Appeal Ref: APP/M1900/W/21/3278097 Land at Hatfield Aerodrome, off Hatfield Road AL4 0HP

- The applications are 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 Inquiry was in connection with an appeal against the refusal of planning permission for the establishment of a new quarry on land at the former Hatfield Aerodrome, including new access to the A1057, aggregate processing plant, concrete batching plant and other ancillary facilities, together with the importation of inert fill material to restore the mineral workings.
- The National Planning Practice Guidance (NPPG) 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.
- The costs applications and responses are in writing, which are summarised in the following costs decisions.

The following abbreviations are used in these decisions:

AW Affinity Water
BAL Brett Aggregates Limited
CBP Concrete Batching Plant
CHPC Colney Heath Parish Council
CMC Case Management Conference
EA Environment Agency
EARA&SRA Ellenbrook Area Residents' Association and Smallford Residents' Association
GWMMP Ground Water Monitoring and Management Plan
HCC Hertfordshire County Council
NPPF National Planning Policy Framework
NPPG National Planning Practice Guidance
PINS The Planning Inspectorate
SoC Statement of Case
SoCG Statement of Common Ground
SoCGH Statement of Common Ground Hydrogeology
UU Unilateral Undertaking dated 8 December 2021

Application (A)

Application (A) is made by CHPC and EARA&SRA for a full, and in the alternative, a partial award of costs against BAL.

Decision

1. Application (A) is refused.

The submissions for CHPC and EARA&SRA

2. BAL's submission of the 2021 application in parallel with the appeal appeared to be a deliberate substitution strategy not to allow due process for public comment. At every occasion BAL brought the 2021 application into contention by conceding that the 2016 appeal would have counted against BAL regarding the CBP, pumping and standoff from the plume. This diverted the resources of those opposing the scheme.
3. BAL did not engage with CHPC and EARA&SRA on pumping because they were the only group in opposition. Yet it is evidence from CHPC and EARA&SRA that has resulted in the 'no pumping proposal' and prompted consideration of the 100 m separation proposal from the plume.
4. BAL did not engage with CHPC and EARA&SRA on either the SoCG or SoCGH. The late completion of the SoCGH had a major impact on the presentation of the case put by CHPC and EARA&SRA, resulting in these Rule 6 parties incurring unnecessary time and costs. BAL redesigned the plant southern bund 'on the hoof' well into the Inquiry highlighting the lack of thought for those using the Country Park. The consistent late submission of other key documents by BAL put CHPC and EARA&SRA, as lay people, at a significant disadvantage.

The response by BAL

5. The four points of amendment were very straight forward, and no one said that these were not clear. The access plans were there to be seen. Deletion of the CBP, no pumping, and the standoff from the plume can hardly be said to be difficult to understand. Making application for these changes cannot be said to be unreasonable.
6. Plans of a southern bund to the plant site were submitted to illustrate matters raised in re-examination of HCC's planning witness. There was no objection to the introduction of these documents, and it is difficult to understand what costs it is said were unreasonably incurred by CHPC and EARA&SRA as a result.
7. It was not unreasonable for BAL to respond to the Regulation 22 request in the way that it did. This drew attention to updated material set out in a clear and accessible table. Experts should not be discouraged from narrowing the issues at Inquiries by means such as the SoCGH.

Reasons

8. It was not unreasonable for BAL to submit a revised application to HCC following the refusal of the 2016 application, or to appeal that decision. The Courts have indicated that a scheme at appeal can be amended subject to satisfying the principles set out in the *Wheatcroft* and *Holborn* judgments.

Notwithstanding my finding in this regard, it was not unreasonable for BAL to make such a request. I understand that the overlapping of HCC's consultation on the 2021 application with the Inquiry into the appeal against the refusal of the 2016 scheme stretched the limited time and resources of CHPC and EARA&SRA. But the same grounds would most likely have been addressed by objectors in dealing with the schemes even if they had not come up for consideration contemporaneously.

9. HCC and BAL are not obliged to engage with third parties in preparing a SoCG. I requested a joint statement with EA and AW because the four parties appeared to be converging on a similar stance with respect to hydrogeological considerations. It would have been advantageous to have had the SoCGH earlier in the appeal process. Nevertheless, I appreciate that it involved the experts from four parties on a topic of some complexity, and so took time to draft. This again put pressure on the resources available to CHPC and EARA&SRA. However, I am satisfied that the hydrogeology expert for CHPC and EARA&SRA had appropriate time to consider and respond to matters that arose in the lead up to and during the Inquiry.
10. The issue of a southern bund for the plant site discussed at the Inquiry would not have resulted in any unnecessary expense on the part of CHPC and EARA&SRA. It was unreasonable of BAL not to clarify before day 7 of the Inquiry which plans were proposed to be substituted in the amended scheme. However, CHPC and EARA&SRA focussed at the Inquiry on what was set out in the 2016 scheme, and so this late clarification of the requested substitution plans did not result in them incurring wasted expense.

Conclusion - Application (A)

11. I find in Application (A) that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated and the application for an award of full or partial costs does not succeed.

John Woolcock

Inspector

Application (B)

Application (B) is made by CHPC and EARA&SRA for a full, and in the alternative, a partial award of costs against HCC.

Decision

12. Application (B) is refused.

The submissions for CHPC and EARA&SRA

13. HCC did not give notice that it would not pursue the second and third reasons for refusal until exchange of proofs of evidence. These matters were conceded by HCC. No evidence was produced to substantiate these reasons for refusal and no prior engagement was ever suggested with CHPC and EARA&SRA.
14. HCC's hydrogeology expert effectively conceded that the fourth reason for refusal may be addressed by a planning condition. CHPC and EARA&SRA were excluded from any discussion about this with the EA and AW, and were given little time to respond to the late completion of the SoCGH. This deprived CHPC and EARA&SRA of equality of representation. It also resulted in CHPC and EARA&SRA incurring unnecessary time and costs.
15. HCC's planning witness conceded the first reason for refusal. The process HCC appeared to adopt was effectively negotiating the 2021 application through the appeal and thus removing public involvement. Nineteen meetings took place between HCC and BAL with no contemporaneous evidence produced by either party to confirm the outcome of discussions. The reasons for refusal were withdrawn or diluted via evidence at the Inquiry and not before. HCC's actions resulted in expense, through time commitments of individuals away from their normal day to day activities, which need not have occurred.
16. HCC has had 21 years to deliver the Trust for the Country Park, yet it appears that enforcement has only commenced as part of this Inquiry, and this has increased the costs incurred by CHPC and EARA&SRA.
17. An award of costs is also sought for the additional costs arising from the failure of HCC to notify by letter those who had made representations on the application or appeal about the Inquiry. HCC's conduct of the appeal was unreasonable, including the late establishment of a programme officer.

The response by HCC

18. The appeal website was created expeditiously once the core document list was agreed. In any event there is no legal obligation on HCC to provide that work in a given timescale, or at all. The electronic material has saved everyone costs.
19. Anyone reading HCC's SoC would have known that the second and third reasons for refusal were not being pursued. It was also clear in their SoCs that CHPC and EARA&SRA were going to address those issues anyway.
20. Work on HCC's fourth reason for refusal has been exemplary. Notwithstanding the original positions of BAL, EA and AW, a package that removes the concerns of HCC's independent expert was secured at the last minute. It was therefore

right not to pursue reason for refusal four, which could be resolved by condition.

21. HCC agrees that the appeal should not have occurred, but it was pursued by BAL who sought to overcome the reasons for refusal through what are considered by HCC to be major changes to the proposal. HCC had to engage in that process.

Reasons

22. HCC gave appropriate notice about not pursuing the second and third reasons for refusal. These were matters CHPC and EARA&SRA were contesting in any event and so HCC's concession did not result in them incurring any unnecessary expense.
23. It is clear from the fourth reason for refusal that HCC was not satisfied that the risks to the water environment were acceptable, that all routes to possible contamination had been appropriately investigated, and that all necessary mitigation had been included and would be effective. These were matters that were tested in evidence to the Inquiry. The outcome of this for HCC was that its concerns could be resolved by conditions. It was not unreasonable for HCC to work through the process that evolved during the Inquiry in the way that it did. This did not deny CHPC and EARA&SRA equality of representation, as their expert witness was afforded a full and fair opportunity to present their case on hydrogeology in the lead up to and during the Inquiry.
24. HCC's reasons for refusal made no mention of delivering the Trust for the Country Park. This was a matter raised in the lead up to the Inquiry by CHPC and EARA&SRA. In this regard it cannot be said that HCC's behaviour in dealing with the appeal was unreasonable or resulted in wasted cost for CHPC and EARA&SRA.
25. HCC's late notification about the Inquiry was unreasonable, but I am not convinced that this resulted in CHPC and EARA&SRA incurring unnecessary expense. In response to my questions, it was stated that the wasted expense resulted from contacting people to encourage them to make submissions to the Inquiry and in diverting the Rule 6 parties' time and attention away from the proceedings unfolding during the event. But it seems to me that much of this effort would have taken place anyway in informing residents and objectors about the progress of the Inquiry and the submission of additional documents. The late notification did not take the Inquiry into an unscheduled 9th sitting day because that was necessary to continue the discussion about conditions/obligations and to hear closing submissions. There is no substantial evidence to indicate that the late notification about the Inquiry resulted in any significant wasted expense incurred by CHPC and EARA&SRA.

Conclusion - Application (B)

26. I find in Application (B) that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated and the application for an award of full or partial costs does not succeed.

John Woolcock
Inspector

Application (C)

Application (C) is made by HCC for a full award of costs against BAL.

Decision

27. Application (C) is refused.

The submissions for HCC

28. There is no satisfactory explanation why the appeal is being pursued at the same time as pursuing the normal process for the 2021 application. Concurrently appealing the refusal and substituting the 'free go' application is unreasonable. There was no serious attempt to defend the CBP, pumping, or the set back from the plume, as proposed in the 2016 plans, and so inevitably the Inquiry was into the 2021 scheme by the backdoor. The 2021 application seeks to address the flaws in the 2016 application and BAL has used the Inquiry to flesh out and try to remedy those flaws. HCC has been put to the cost of defending what has in effect become an appeal against an assumed refusal of the 2021 application, when the statutory processes have not run their course and HCC has not even had a chance to consider the 2021 application.
29. The CBP only disappeared under the 2021 application and the UU submitted to the Inquiry. It is not appropriate development and should never have been included. However, BAL did not suggest a split decision. Furthermore, there was no onus on HCC to consider a split decision going to what was put forward by BAL as part of the description of the development.
30. BAL's concessions at the Inquiry go to the heart of HCC's concerns about Green Belt and water quality. Once the decision had been made by PINS not to defer the appeal, and in the light of BAL's stance adopted at the Inquiry regarding the 2016/2021 substitution, it was wholly unreasonable to pursue rather than withdraw the 2016 appeal. The appeal simply should not have been brought. Pursuing the appeal at this stage is misconceived in principle and substantial cost has thereby been imposed on HCC.

The response by BAL

31. The 2016 application is for development of a longstanding allocation for the extraction of sand and gravel, about which 19 meetings were held with HCC between 2015 and 2020. The reasons for refusal have been in large measure abandoned as capable of resolution by the imposition of appropriate planning conditions. The CBP was always capable of deletion from the scheme by the simple mechanism of issuing a split decision. HCC Members who went against officer advice did not apply the approach in paragraph 38 of the NPPF about seeking to approve applications for sustainable development where possible, by being positive and creative, including the use of conditions and obligations.

Reasons

32. It was not unreasonable for BAL to exercise its statutory right of appeal, which rightly then falls to be determined on its merits. Notwithstanding BAL's 23 September 2021 invitation for the Inspector to substitute the resubmission development in this appeal, it was clarified at the Inquiry that changes to the

2016 scheme were proposed rather than the wholesale substitution of the 2016 scheme with the 2021 scheme. Albeit this would have required the substitution of some drawings. In these circumstances it was not unreasonable for BAL to explore at the Inquiry whether the 2016 proposal could be made acceptable through the use of conditions and planning obligations. For the reasons set out in my decision I have concluded that this would not be so in this case, but that finding does not render the appellant's behaviour unreasonable.

Conclusion - Application (C)

33. I find in Application (C) that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated and the application for an award of costs does not succeed.

John Woolcock
Inspector

Application (D)

Application (D) is made by BAL for a full and in the alternative a partial award of costs against HCC.

Decision

34. Application (D) is refused.

The submissions for BAL

35. HCC resolved to grant planning permission in 2017 subject to completion of a s106 agreement. That resolution was on the basis of draft conditions which were materially the same as those that appeared in the September 2020 Officer's Report. There has been no material change in planning circumstances in the intervening period.
36. Concerns about the CBP were not raised in meetings with BAL. If the CBP was of such significance to HCC Members the proper course would have been to either defer a decision to allow BAL to consider the position or to issue a split decision. HCC's planning witness agrees that the first reason for refusal is not well founded where the proposal complies with the development plan and permission should be granted subject to conditions and obligations.
37. HCC concedes that its second and third reasons for refusal are untenable. BAL had to address these because they were not withdrawn until exchange of Proofs of Evidence. It is no answer to say that EARA&SRA were running similar cases. If the refusal was unreasonable then planning permission should have been granted.
38. HCC's hydrogeology expert agrees that the fourth reason for refusal may be addressed by planning condition. HCC Members made a peremptory decision contrary to the specialist advice of their officers, EA and AW. If Members had residual concerns about hydrogeology they should have asked for an independent review or granted permission subject to conditions that addressed their concerns.
39. The refusal of planning permission and HCC's conduct of the appeal was unreasonable. The proposal accords with the development plan and could be made acceptable subject to appropriate planning conditions and obligations.

The response by HCC

40. Reliance on the 2017 resolution is misleading. That resolution included necessary changes to the 2000 section 106 agreement that were never secured.
41. The conditions to which HCC's planning witness referred required major changes and much more information to limit the impact on the openness of the Green Belt, including the scale of the plant site, bunds and haul roads, along with plans to maintain as much openness as possible from within the site during the works. It is for BAL to justify its scheme, not for HCC to redesign it or to remove the CBP by issuing a split decision.

42. The second and third reasons for refusal were not pursued in HCC's SoC. The need to address those matters was recognised at the CMC to be to meet the points raised by third parties.
43. The fourth reason for refusal can now be addressed by conditions, but only because 'no pumping' is a fundamental new element in the proposal. The rigour of the appeal process led to the patent flaws in the pumping proposal and GWMP being exposed. A very different regime is now accepted from that previously put forward as adequate.
44. HCC Members did disagree with officers but were right to do so. There is no evidence before this Inquiry in support of key elements of the 2016 scheme that was refused. The scheme for which permission is now sought on appeal is very different in its essential elements from that which Members were asked to consider.

Reasons

45. HCC Members properly exercised their development management responsibilities in dealing with legitimate concerns raised by third parties about hydrogeology. It was not unreasonable for HCC to revisit its 2017 resolution in the light of further evidence then available about the bromate plume.
46. HCC did not prevent or delay development which should clearly be permitted having regard to national policy. Substantive evidence was adduced by HCC in support of its first and fourth reasons for refusal, resulting in BAL suggesting significant changes to the appeal scheme. I am satisfied that appropriate notification was given by HCC about not pursuing its second and third reasons for refusal.
47. HCC was right to conclude that when it determined the application the imposition of reasonable conditions would not have enabled the proposed development to go ahead. There was no obligation on HCC to issue a split decision and it was not unreasonable for the application to be determined on the basis of the description of the proposed development as specified on the application form. I find no unreasonable behaviour by HCC in the way that it dealt with the application or appeal.

Conclusion - Application (D)

48. I find in Application (D) that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated and the application for an award of full or partial costs does not succeed.

John Woolcock
Inspector
