



Costs Decision

Inquiry (In-Person and Virtual) Held on 11 – 14 January, 1 – 4 February and 8 – 11 February 2022

Site Visit made on 7 February 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Costs application in relation to Appeal Ref: APP/Q4245/W/20/3258552 Former B&Q, Great Stone Road, Old Trafford, M32 0YP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Accrue (Forum) 1 LLP for a partial award of costs against Trafford Metropolitan Borough Council and Lancashire County Cricket Club.
 - The appeal is against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
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Decision

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

The submissions for the applicant

2. The application made in writing by the applicant is for a partial award of costs in connection with reason for refusal one which relates to the proposed development's effect on the fine turf training facility (FTTF) at Emirates Old Trafford (EOT). The Primary Application is made against Trafford Metropolitan Borough Council (the Council) with an alternative application made against Lancashire County Cricket Club (LCCC), a Rule 6 Party to the Inquiry¹.

The responses by Trafford Metropolitan Borough Council and Lancashire County Cricket Club

3. The Council and LCCC submitted their written responses ahead of the cost's session at the Inquiry. I have had regard to them in reaching my decision. No other submissions were made by either the Council or LCCC at the Inquiry.

The response for the applicant

4. The applicant made further oral submissions at the Inquiry. These are as follows, and I present them verbatim. Firstly sir, just to confirm that I do maintain a claim for a partial award, firstly against the Council and in the alternative LCCC.
5. There are no submissions from LCCC that I need to respond to so I will only respond to the Council.
6. Sir, the position of the Council is misconceived, what is said at paragraphs 1 and 11 of its response is that the Council has been reasonable and pragmatic

¹ Planning Practice Guidance, Paragraph: 029 Reference ID: 16-029-20140306

and that in fact it has saved the incurring of costs. Sir you will understand that it is not a position of substance, it is all smoke and mirrors. What is said is that the Council did nothing unreasonable in withdrawing reason for refusal one and that in fact adopted a sensible course. To be clear sir, the applicant does not say the Council acted unreasonably in withdrawing that reason for refusal because sir the withdrawal was unavoidable in light of events. The unreasonable conduct on behalf of the Council is to be found in how it acted previously. The reason for refusal should never have been pursued or certainly not have been pursued beyond April 2021, almost 12 months ago when LCCC acquired growth lights. This, if ever the reason was justified and the applicant says it wasn't, should have been withdrawn before the Case Management Conference and the preparation of proofs.

7. Sir, the Council's response refers to the fact that the Council adduced substantial weight in favour of the reason for refusal. The problem for the Council was that evidence was adduced on the basis of a fundamental understanding of the factual position and when the factual position was drawn to the Inquiry's attention by the appellant, the Council withdrew the reason for refusal and elected not to challenge the applicant's evidence on that topic. At paragraph 7 of the Council's response, it is suggested that the Council on the morning of day 2 of the Inquiry was confronted by matters beyond its control and that it sought to act reasonably in relation to that situation. The Council cannot absolve itself of responsibility for that situation. The Council resolved on a reason for refusal, and it called evidence from a witness which was factually wrong. This is because the Council had failed to conduct the necessary investigations to ensure that its case was based on a sound, factual premise. The significance of its failure is immediately apparent from the fact that the reason for refusal was immediately withdrawn, and no challenge was offered to Mr Colliers evidence.
8. I need to refer to paragraph 12 of the Council's response (paragraph 12 subsequently read out). Sir, that is wrong, and the Council is wrong to suggest there has been no substantive concession. In fact, there has been a comprehensive concession. Ms Harrison confirmed yesterday that whereas the Council had previously afforded substantial weight to the harm which it perceived was caused to the facility, it now accepted that there was no harm and that no weight should be attached. So, sir there has been a full and comprehensive withdrawal of the Council's case. Given that position sir, I respectfully submit that the applicant is entitled to recover its costs in respect of this issue which must include Mr Collier's preparation and proof for the Inquiry, and sir we took the whole of day one on this matter and I leave it to your judgement sir, whether this or any other time period relating to this matter is appropriate. Unless I can assist further that is it sir.

Reasons

9. The Guidance 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. For an application to be successful, it needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
10. The appeal to which this costs application relates was made in response to the Council's non-determination of the planning application. The appeal form was dated 28 August 2020. Subsequently, the Council's Planning and Development

Management Committee determined the Council's position had they been able to determine the planning application. Following their meeting on 15 October 2020, multiple putative reasons for refusal were adopted. The first reason relates to the substance of this application and the proposal's effect on the FTTF at LCCC.

11. The reason for refusal was advanced by the Council following the objection of Sport England, with the support of the England and Wales Cricket Board (ECB) as technical advisors. This position was then set out in the Council's Statement of Case, the Statement of Common Ground Addenda and the Council's topic specific Proof of Evidence, which fed into other Proofs of Evidence.
12. The Council's evidence was presented and cross examined at the Inquiry. This outlined the Council's position that the proposal would cause overshadowing to the FTTF which would result in consequential light and temperature effects. Setting aside the merits of this, and the implications for the grass, the Council contended that growth lights would be needed to mitigate the effect. The applicant disagreed with this stance.
13. In written and oral evidence, the Council said that no growth lights were used by LCCC on the FTTF currently. This position was plainly wrong as shown by photographs taken by the applicant's Counsel on the evening of day one of the Inquiry and the morning of day two. These showed a growth lighting rig in use on the FTTF.
14. It was evident that the Council and its witness was unaware of this situation. I recognise the Council's efforts to ascertain what the position was from LCCC, once the matter came to their attention, and the prompt withdrawal of the reason for refusal on day two which avoided further Inquiry time being spent on the matter. Although Sport England, the ECB and LCCC all fed into the Council's position, ultimately it was the Council's decision to pursue the reason for refusal, present evidence on this matter and call a witness to the Inquiry. For their part LCCC could have and should have kept the Council abreast of the change in circumstances, but that does not obviate the Council's responsibility and actions.
15. As the Council outlines in its response, it had two options when confronted with this situation. Both were the Council's alone to consider and determine its next step. The Council decided to withdraw the reason for refusal and not cross examine the applicant's witness. This did save subsequent Inquiry time, but it is no remedy to the preceding time spent on the matter. The simple point remains that the evidence presented by the Council on the issue of growth lights was not accurate. The applicant has, therefore, incurred wasted time and expense arising from their witness having to prepare his evidence for the Inquiry and in attending the Inquiry itself.
16. The Council's witness would also not have needed to have been cross examined nor both witnesses re-called for examination at the start of day two.
17. Given my finding on the Primary Application I have not gone onto consider the alternative application against LCCC.

Conclusion

18. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated.

19. In reaching this conclusion, I note that evidence on the FTTF issue started at 12:10pm on day one and was roughly dealt with in an hour on day two². Hence, it was not, in total, 1.5 days as suggested by the applicant.

Costs Order

20. 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 the Trafford Metropolitan Borough Council shall pay to Accrue (Forum) 1 LLP, the partial costs of the appeal proceedings limited to those incurred in preparing, presenting and cross-examining evidence in relation to the alleged impacts of the proposal on the FTTF; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to Trafford Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR

² Inspector Note that the reason for refusal was withdrawn at 10:25 on day 2.