



Costs Decision

Hearing Held on 14 September 2021, 2 & 3 March 2022

Site visit made on 4 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Costs application in relation to Appeal Ref: APP/C5690/W/20/3254911 Willow Tree Riding Establishment, Ronver Road, London SE12 0NL

- 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 the Council of the London Borough of Lewisham for a partial award of costs against Austringer Estates Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for the development described as Full application for the demolition of existing buildings, provision of replacement equestrian facilities, landscaping, and associated access.
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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 Council

2. The Council is of the view it has been put to unnecessary and wasted expense by the appellant due to the adjournment of the hearing on 14 September 2021 at short notice, and through having to consider and respond to late evidence provided by the appellant in respect of ecology and arboricultural matters after the hearing had opened.

The response by Austringer Estates Ltd

3. Austringer Estates Ltd advises it was unaware of any issues leading to the loss of its ecologist, and given the late notice it was given, it explored all available avenues to provide an ecological witness. Austringer Estates Ltd considered it essential and necessary to provide an ecology witness given the submissions of an interested party. It is of the view that the further ecological and arboricultural submissions were to respond to matters raised during the appeal process and did not constitute new evidence.

Reasons

4. Paragraph 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Paragraph 16-052-20140306 of the PPG explains that examples of unreasonable behaviour that may result in an award of costs include failing to be represented at the hearing without good reason and

- introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
5. The appellant notified me on the afternoon of the day before the Hearing that they would seek a formal adjournment to the Appeal following a number of matters that had arisen over the weekend. I was informed a matter of professional and personal conflict had arisen between the ecological consultant and the arborist in the last few days such that only one consultant could credibly attend.
 6. At the first day of the hearing, I was given little further substantive detail as to when the appellant first became aware of the issues or the reasoning behind the conflict. This is still the case. Given the overlap between ecological matters and those in relation to Metropolitan Open Land and landscape, they would prefer to deal with some planning and highways matters only on the day. Having heard all that I did, given the appellant had no credible ecological consultant available, in the interests of a fair hearing I agreed to deal with procedural and highway matters only before adjourning.
 7. The appellant is responsible for ensuring it is able to provide witnesses for a hearing. It is not clear why the conflict between two consultants working together on a project for some time, only came to light at such a late stage.
 8. Time was given over to discussing the justification for an adjournment on the first day. It is likely that without this issue, the hearing could have been dealt with in two days in total, even if an adjournment after a first full day was justified to ensure the appellant was represented in respect of flood risk. The late notice of the situation in respect of its ecological witness and subsequent request for an adjournment is unreasonable behaviour. It resulted in the Council incurring unnecessary and wasted expense in the appeal process. Those costs are in relation to the first day, with the exception of the Council's highway witness, who was not required after the first day as the matters were satisfactorily discussed.
 9. The appellant gave notice it intended to submit a second tranche of late evidence during the adjournment, which it submitted well in advance of the resumption. I am of the view that the update evidence in the Statement on Ecology by Rachel Hacking (January 2022) should be provided before the opening of the Hearing. To submit this document so late is unreasonable behaviour. However, having regard to the limited matters it raised, given the length of time that had elapsed, and that the Council has consistently not objected to the application on ecological grounds, while it took the time to respond to this evidence, it did not incur wasted or unnecessary expense.
 10. The Council has maintained an objection in respect of arboricultural-related matters. The appellant's Arboricultural Impact Assessment (dated January 2022) by Arbor-Eco Consultancy and appendices (AIA) is a lengthy submission. It followed other lengthy late submissions before the first day of the hearing that include landscape and arboricultural evidence not submitted in accordance with the appeal timetable.
 11. The AIA stated that its intention was to respond to and expand upon a number of points raised. However, the information it contained, such as new tree survey information, impact assessments, clarification of some previous inconsistencies, and protective measures during construction, is information

that should have been provided in full, with the statement of case in accordance with the appeal timetable. This information does not appear to have been necessitated by the withdrawal of the appellant's ecologist. There is no good reason it should form part of a second submission of substantive late evidence in respect of this matter, during an adjournment. Therefore, this is unreasonable behaviour, which has resulted in the Council incurring unnecessary expense in the appeal process.

Costs Order

12. 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 Austringer Estates Ltd shall pay to the Council of the London Borough of Lewisham, the costs of the appeal proceedings described in the heading of this decision in so far as they relate to the Council's attendance at the adjourned hearing on the 14 September 2021, with the exception of its highway witness, and the costs associated with providing a response to the late AIA submitted during the adjournment, and preparing the costs application in respect of these matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Austringer Estates Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Dan Szymanski

INSPECTOR