



Costs Decisions

Inquiry held on 7-10, 20-22, 27 and 31 March 2023

Site visit made on 10 March 2023

by M Hayden BSc, Dip TP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th October 2023

Costs application in relation to Appeal Refs: APP/Z3825/W/22/3308455 and APP/Y9507/W/22/3308461

Land West of Ravenscroft, Storrington, West Sussex, RH20 4EH

- 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 Horsham District Council for a partial award of costs against A2Dominion.
 - The Inquiry was in connection with the above linked appeals against the refusal of planning permission for Hybrid applications consisting of full permission for the relocation and enhancement of the Ravenscroft Allotment site and outline planning permission for up to 78 homes with all matters reserved except access (excluding internal estates roads) from Ravenscroft, and new community parkland.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded against a party at appeal, where that party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The Council's claim, in respect of both appeals, is procedural and, in summary, is made on two grounds:
 - (a). That the Appellant did not submit their full case on water neutrality with the appeals, delayed the provision of key information on their revised water neutrality strategy until 31 January 2023, and presented information on rainwater yield coefficients in an inaccurate and misleading way, leading Natural England and the Council to misinterpret the case, and the Council to incur unnecessary and wasted expense in terms of counsel's advice and officer time redrafting its evidence.
 - (b). That the Appellant did not clarify in their statement of case (SoC) the basis of their challenge to the Council's housing land supply (HLS) evidence, and did not indicate that this challenge would be withdrawn until 4 weeks after the publication of the Council's 2022 Annual Monitoring Report (AMR), resulting in wasted officer time in preparing a proof of evidence on HLS which was not necessary.

4. I have considered the Council's claim in the light of the evidence and processes for the related appeals, the Appellant's response to the claim and the Council's final comments on it.

Ground (a)

5. The Council's claim of unreasonable behaviour on the part of the Appellant with regard to their evidence on water neutrality revolves around three main points, which are summarised in paragraph 15 of the Council's claim. I consider each point in order below.
6. Firstly, the Council states that the Appellant failed to provide their full case on water neutrality with their SoC. However, it is apparent from the evidence before me that, at the time of submitting the appeals on 6 October 2022, the Appellant's water neutrality mitigation strategy relied upon retrofitting water efficiency measures into existing housing stock in their ownership elsewhere in the Sussex North Water Resources Zone (WRZ). This is clearly set out in their SoC, and therefore complied with the guidance on making appeals and the content of SoCs contained in the Procedural Guide¹. As such, the Appellant did not fail to provide their full case on water neutrality, as it existed at the time they submitted the appeals.
7. However, the Council subsequently published proposals for a strategic offsetting scheme to achieve water neutrality for new development in the Sussex North WRZ, on 25 November 2022². This changed the evidence base for water neutrality relevant to the appeals. In response, the Appellant informed the Council on 9 December 2022 that they would be relying on the strategic offsetting scheme, together with on-site water reduction measures, to ensure water neutrality for the proposed development. The Council subsequently published their SoC on the appeals on 14 December 2022, in which they stated that, for a number of reasons, the strategic offsetting scheme could not be relied upon to provide certainty of water neutrality for the proposed development.
8. Whether or not the strategic scheme was sufficiently far advanced to be relied upon for mitigation, is a substantive matter that went to the heart of the evidence on the water neutrality strategy in these appeals, on which I have reached my decision separately. However, it was reasonable in procedural terms for the Appellant to notify the Council at that stage in the appeal process of their intention to alter their strategy for water neutrality, based on detailed evidence of a forthcoming strategic offsetting scheme that had not been published at the time the appeals were submitted.
9. The Appellant informed the Case Management Conference (CMC) on 20 December 2022 that they were preparing an alternative water neutrality strategy to that on which the applications were determined. The purpose of the CMC is to provide an early opportunity for the Inspector to discuss with and give directions to the main parties on the presentation and preparation of evidence to the Inquiry. Therefore, I consider that the CMC was a reasonable stage, early on in the appeal process, for the Appellant to discuss the intended change to their case on this main issue.

¹ Procedural Guide: Planning appeals – England, Planning Inspectorate

² Sussex North Water Neutrality Study Part C – Mitigations Strategy, November 2022 (CD 8.1)

10. The alternative strategy included a rainwater harvesting scheme at a local garden centre, as a second limb to the mitigation strategy, rather than the original housing stock retrofitting scheme, should the strategic offsetting scheme not be ready in time. Whilst the reasons for this were not stated by the Appellant, the issue for me to determine is whether it was reasonable for the Appellant to propose this change to their strategy during the appeal process.
11. Part 16 of the Procedural Guide provides guidance on amending a scheme once an appeal has been made, advising that the appeal process should not be used to evolve a scheme. Whilst this normally applies to the development proposal itself, the guidance is also relevant to changes to other aspects of the appeal proposals; in this case a mitigation strategy. The guidance does not rule out amendments, but advises that where they are proposed, exceptionally, during the appeal process, the Wheatcroft Principles should be applied to ensure parties to the appeal are not prejudiced.
12. Taking account of the Wheatcroft Principles, a timetable and process was agreed at the CMC for the Appellant to submit their alternative strategy to the Council, and allow time for Natural England to be reconsulted, before the deadline for submission of proofs of evidence. That timetable was confirmed in my CMC notes, with details of the alternative strategy to be provided by the appellant by 6 January 2023, and a SoCG on water neutrality and proofs of evidence to be submitted by 7 February 2023. I am satisfied that this process applied the Wheatcroft Principles and that the actions of the Appellant in putting forward an alternative water neutrality strategy were timely and reasonable, in the circumstances of important new evidence emerging after the appeals had been submitted.
13. Secondly, the Council claims that the Appellant behaved unreasonably by delaying the provision of key information on their revised water neutrality strategy until 31 January 2023. From the evidence submitted, the chronology of submissions and exchanges between the Appellant and the Council is as follows:
 - On 6 January 2023, the Appellant submitted details of the proposed alternative water neutrality strategy in line with the agreed timescale. This comprised a Water Neutrality Statement (WNS)³ and a revised shadow Habitats Regulations Assessment⁴ (sHRA), which explained the two limbs of the strategy, namely the strategic offsetting scheme and the off-site rainwater harvesting scheme at a local garden centre. The details submitted included calculations for the residual water consumption of the proposed housing development with on-site water efficiency measures installed, the existing potable water consumption of the garden centre, the roof area of its buildings and the rainwater yield based on average rainfall data. It also proposed the use of a Grampian style condition and S106 obligations to secure the proposed off-setting measures and to prevent commencement and occupation of proposed development until the mitigation measures were agreed and in place.
 - On 19 January 2023, an email from the Council to the Appellant requested further evidence of the existing baseline consumption at the appeal site, queried elements of the calculation of the residual water consumption of the proposed development, and requested the wording of the Grampian style

³ Water Neutrality Statement, Stuart Michael Associates, dated 05/06/2023 (in error) (CD 8.13)

⁴ Revised Shadow Habitats Regulations Assessment, Ecology Solutions, January 2023 (CD 8.11)

conditions. The Council also indicated that the proposed offsetting mitigation solutions remained the key areas of dispute on water neutrality.

- On 31 January 2023, the Appellant submitted an updated WNS⁵, which amended the existing baseline and residual water consumption figures using revised and more precautionary data, and provided details of the management and maintenance regime for the proposed on-site water reduction measures, in response to the Council's email. It also provided further detail for the off-site rainwater harvesting scheme, including the identity and location of the garden centre, revised more precautionary rainfall data for that location, plans of the buildings and ground surface areas that could be used for rainwater capture, and revised calculations for the rainwater capture.
14. I recognise that the updated WNS contained significant new information on the Appellant's alternative water neutrality strategy, after the agreed deadline of 6 January. However, this was principally due to the fact that the location of the garden centre could not be confirmed at that time, which the Appellant has explained was due to ongoing commercial discussions with the garden centre owners. I accept that as a reasonable justification for the delay.
15. I also acknowledge that the Council and Natural England would have had to review their position on the alternative water neutrality strategy in the light of the revised WNS. However, this is not unreasonable or unexpected during an appeal process, where there is an emphasis on parties reaching common ground on evidence as far as possible before proofs of evidence are submitted.
16. It should have been clear from the CMC, and my notes and directions arising from it, that I wanted to allow time for the parties to reach agreement on the alternative water neutrality strategy, with the potential that any remaining differences could be dealt with via a round table discussion at the Inquiry. To that end, I do not regard the time and work required for parties to review their cases in the light of exchanges of evidence, in order to achieve common ground, to be wasted or unnecessary. To allow time for that dialogue to take place on the revised WNS, I agreed an extension of time for the completion of the SoCG on Water Neutrality until 22 February 2023, which the Council and Appellant agreed to.
17. Thirdly, the Council's claim that the Appellant presented information on rainwater yield coefficients in an inaccurate and misleading way, leading Natural England and the Council to misinterpret the case, is not supported by the evidence. The Appellant explained that some of the figures in tables 7 and 8 and Appendix N of the revised WNS were included in error. These were corrected in the rebuttal proof of evidence of their Ecology witness, where the use of rainwater yield coefficients for different surface areas at the garden centre was further clarified, to the satisfaction of Natural England in their response of 14 March 2023. Making errors does not constitute unreasonable behaviour, particularly where these are acknowledged and clarified in written evidence.
18. In their final comments on the costs claim, the Council raised a number of other instances of what they regard as unreasonable behaviour in relation to the Appellant's water neutrality case. The wording of the Grampian style conditions was not provided by the Appellant until the opening day of Inquiry. Whilst this

⁵ Water Neutrality Statement, Stuart Michael Associates, dated 24 January 2023 (CD 8.14)

is not encouraged, it is not uncommon that suggested conditions are submitted at this point in appeal proceedings. There was adequate time for the Council to consider their position on the suggested wording before evidence on water neutrality began on the third day of the Inquiry. A separate round table session (RTS) was also programmed for the penultimate sitting day to discuss the suggested conditions. Therefore, this did not amount to unreasonable behaviour.

19. The removal of the garden centre owners and operators from the S106 unilateral undertaking (UU) was explained during the Inquiry. I have dealt with this point in the appeal decisions. Finally, the need for the changes to the S106 UU and Grampian style conditions to prevent the commencement of development until water neutrality mitigation has been secured by payment into the strategic offsetting scheme was discussed and agreed at the RTS on these matters on 27 March 2023. Although the final wording was not submitted by the Appellant until 30 March 2023, there was opportunity for the Council to cross examine the Appellant's planning witness about the changes on the final day of the Inquiry, and to deal with it as part of their closing submissions.
20. Accordingly, I do not consider that the Appellant behaved unreasonably or caused the Council to incur unnecessary or wasted expense, with regard to the preparation and submission of evidence on water neutrality.

Ground (b)

21. There are two main points to the Council's claim of unreasonable behaviour on the part of the Appellant in respect of their case on HLS. Firstly, that the Appellant did not clarify in their SoC the basis of their challenge to the Council's HLS evidence. However, paragraphs 5.12-5.18 of the Appellant's SoC make clear the reasons why the Appellant disagrees with the Council's calculation of a 4 year HLS for Horsham District. In paragraphs 5.12-5.14, they point out that the HLS calculation in the 2020/21 AMR was based on the 2021 Local Housing Need (LHN), which had since been updated, and that when the 2022 LHN is applied, the supply reduces to 3.78 years. They also argue in paragraph 5.15 that the water neutrality issue is likely to have further reduced the supply of sites in the District. So, at that stage, based on the evidence available, the Appellant clearly stated that both the housing requirement and land supply would be addressed in their evidence to the appeals.
22. Secondly, the Council considers it was unreasonable that the Appellant did not indicate their challenge to the HLS evidence would be withdrawn until 4 weeks after the publication of the Council's 2022 AMR. Having considered the accounts of both parties, I make the following observations on this point of the claim:
 - (i). The Council published the 2021/22 AMR, on 23 December 2022, the Friday before Christmas. The Appellant has confirmed that their planning witness was on annual leave the following week, which is not unreasonable or unexpected, at that time of the year.
 - (ii). From 3 January 2023, the day after the New Year public holiday, until 17 January 2023, when the Appellant confirmed their agreement to the revised HLS position, was a period of 2 weeks. That was not an unreasonable length of time for the Appellant to take to review the HLS data in the AMR and agree that evidence on this issue would not need to be debated at the Inquiry.

- (iii). The Appellant confirmed their agreement to the revised HLS position as part of the Planning Matters statement of common ground (SoCG). The 17 January 2023 had been identified in the timetable set out in my CMC notes, as the date by which any SoCG on HLS should be submitted. Therefore, it was a reasonable date to target for evidence on HLS to be agreed.
 - (iv). In the timetable for the submission of documents in my CMC notes, three weeks had been allowed, between 17 January and 7 February 2023, for proofs of evidence to be completed following the first deadline for SoCGs. Given that the Council had just published its most up to date evidence on HLS within the 2021/22 AMR, and that the preparation of a SoCG on HLS had been agreed at the CMC, any further evidence which the Council might have needed to prepare on HLS, could reasonably have awaited completion of the SoCG.
23. I am not persuaded, therefore, that the Appellant's actions or statements in respect of HLS evidence, were unreasonable or caused the Council to incur unnecessary or wasted expense.

Conclusion

24. Overall, therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted in this case.

M Hayden

INSPECTOR