



Costs Decision

Inquiry Held on 30 November and 1, 2, 6, 7 & 8 December 2022

Site visit made on 1 December 2022

by G D Jones BSc(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2023

Costs application in relation to Appeal Ref: APP/D0121/W/22/3293919

- 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 applications are made by Bristol Airport Limited for an award of costs against J B Pearce Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as the change of use of land from gypsy pony track/agricultural land to use for a Park and Ride car park for Bristol Airport with 3101 parking spaces plus arrival/departure area with construction of associated roads and surfaces and the erection of a reception centre.
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Decision

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

Reasons

1. The Government's Planning Practice Guidance states 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.
2. The application and the appellant's response were made in writing. Consequently, there is no need for the respective cases to be repeated.
3. As part of the applicant's case, in terms of a potential failure to particularise the appellant's case and/or adhere to its case as particularised in its Statement of Case, it is alleged that the appellant failed to identify clearly what its case was on demand for the appeal proposal, as an aspect of 'need' in the context of the second refusal reason.
4. However, the appellant's case on demand / need appears to me to have been quite straightforward. Nor did it change significantly during the appeal process. In summary, it relied on evidence of demand / need for airport parking from BAL's previous appeal / Inquiry. Rather than putting a case that the proposed use would respond to new demand / need, it was put primarily on the basis that the appeal development would offer competition to other airport parking operations, existing and planned, including those of BAL, for previously identified demand.
5. On my understanding of the evidence, the appellant's case regarding Policy DM30 of North Somerset Sites and Policies Plan Part 1: Development

Management Policies, July 2016, (the DMP) appears to have relied primarily on 'events on the ground' having rendered this Policy out of date, as referred to at paragraphs 62 and 63 of my associated appeal decision. I do, nonetheless, recognise that the appellant's Statement of Case could have made this point more clearly. While I largely disagreed with the appellant's approach to this matter, as reflected in my appeal decision, it was not an unreasonable case to have pursued and advanced. Nor do I see it as being inconsistent with the Statement of Case.

6. There were, though, points raised by the appellant, including regarding site contamination and whether the proposed use would amount to public transport, during the Inquiry that were not foreshadowed in the appellant's Statement of Case. Nonetheless, none of these matters were particularly substantial, such that they could be dealt with reasonably simply and did not in my view unnecessarily prolong the Inquiry.
7. The applicant's second main ground, relating to the appellant's alleged failure to advance evidence on need for the appeal proposal, is dealt with above at paragraph 4.
8. The third main ground relates to the 'inclusion of a proposed undertaking to remove other off airport car parking spaces and late identification of the land to be subject to the proposed obligation'. I note that this matter, again, was not clearly foreshadowed in the appellant's Statement of Case. Nonetheless, it was referenced in the appellant's planning witness's proof of evidence, albeit in broad terms. Moreover, had any of the proposed planning obligations of the unilateral undertaking (UU) become active they would have been to the Council as local planning authority, rather than being matters directly for the applicant. Consequently, it was primarily for the Council to respond to whether the UU was acceptable.
9. In any event, as set out in paragraph 34 of my appeal decision, there was no clear or compelling evidence that the land in question had in the past provided, did at that time, or would thereafter provide a significant or reliable source of car parking. Consequently, in practice, the matter could have been dealt with very simply by the other main parties, including BAL.
10. Regarding the appellant's submissions that the appeal development would deliver improvements in air quality, as set out in paragraph 34 of my appeal decision, this too was a reasonably straightforward matter. Consequently, it too could have been dealt with very simply as part of the Inquiry process by the other parties, including BAL.
11. In respect to the appellant's case regarding claimed environmental benefits of the appeal scheme, I recognise that these were not all entirely consistent with the appellant's own evidence, notably its Environmental Statement and Transport Assessment as far as neither supported the claimed carbon, air quality, congestion or noise related benefits. Nonetheless, although I did not agree with it as set out in my appeal decision, there was some evidential basis for these claims, such that I do not consider the appellant's behaviour to have been unreasonable in this regard. Moreover, once the evidence had been tested via the Inquiry process, the appellant's planning witness did adjust her position, acknowledging that they did not amount to 'significant' benefits.

12. For the foregoing reasons, therefore, the 'Primary Application' for an award of costs has not established that the appellant behaved unreasonably and caused the applicant to incur unnecessary or wasted expense in the appeal process.
13. Regarding the applicant's 'Alternative Application', however, the appellant did act unreasonably in terms of the provision of its Environmental Statement (ES). In this regard significant elements of supporting information, which should have been in place before the appeal, were only completed shortly before the Inquiry finally opened. This resulted in avoidable delays.
14. The government's Procedural Guide: Planning appeals – England is clear that appellants should not make their appeal until they are ready to proceed to the decision and that all parties must have their resources ready from the start. This was evidently not the case in this instance. Nonetheless, once the appeal had been made, when the Planning Inspectorate identified that the appellant's ES had inadequacies, deadlines were not fully respected by the appellant. This resulted in substantial delay, three Case Management Conferences rather than just one, as is customary, and a postponement of the Inquiry after sitting dates had been fixed for earlier in 2022.
15. These delays could and should have been avoided. For instance, the appellant could have provided the information at the application stage or after the application was determined, but before the appeal was made. Failing that, it could have done more to provide it in a timelier manner once it had made the appeal. Alternatively, if it were not possible to respect the normal Inquiry timetable or that prescribed by the Inspectorate in this case, the appellant could have withdrawn the appeal on the basis that it was evidently not ready to proceed to the appeal decision for a considerable time after the appeal had been lodged. Accordingly, the appellant's behaviour was unreasonable in this regard.
16. This unreasonable behaviour will have resulted in unnecessary or wasted expense for the applicant, for instance that associated with the avoidable two additional CMCs and the postponement of the Inquiry by some four months from late July 2022. It is in this regard only that the award of costs is granted to BAL as applicant.

Conclusion

17. Taking all the above into account I have not found the appellant behaved unreasonably causing BAL to incur unnecessary or wasted expense in the appeal process in respect to the matters raised in its 'Primary Application' for an award of costs. However, by not being ready to proceed to the appeal decision at the time the appeal was made and by not reasonably adjusting to those circumstances, delay was caused to the appeal process. The appellant's unreasonable behaviour in this regard caused BAL to incur unnecessary or wasted expense in the appeal process, such that a partial award of BAL's costs is warranted.

Costs Order

18. 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 J B Pearce Limited shall pay to Bristol Airport Limited, the costs of the appeal

proceedings described in the heading of this decision limited to those costs incurred as outlined in my foregoing decision.

19. The applicant is now invited to submit to J B Pearce Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G D Jones

INSPECTOR