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 North Somerset Council 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.

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. 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Policies, July 2016, (the DMP) appears to have relied primarily on 'events on the ground' having rendered this Policy out of date, as referred to at paragraphs 62 and 63 of my associated appeal decision. 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.

4. While I also disagreed with significant aspects of the appellant's case regarding noise, biodiversity and sustainable travel, as reflected in my appeal decision, the evidence and approach taken was not unreasonable. The appellant's acoustic witness may not have been as qualified or experienced, nor as surefooted under cross-examination, as the Council's witness.

5. As set out at paragraph 39 of my appeal decision, British Standard 4142:2014+A1:2019 Methods for rating and assessing industrial and

commercial sound (BS4142) appears to be appropriate to the appeal scheme. Nonetheless, as explained in paragraph 40 of my decision, there are other potential methodologies. While I favoured BS4142 for the reasons set out in my decision, it was not unreasonable for the appellant to have adopted a different approach and in my view the witness in question provided a credible explanation why that approach had been taken, albeit that there appeared to be some shortcomings in some aspects of the evidence.

6. The witness in question did fail to calculate the height of an acoustic barrier despite having been given a lengthy lunch adjournment to do it in. Nonetheless, on my observations, this was a consequence of him misunderstanding what had been asked of him rather than an inability on his part. In any event, in the context of the wider evidence it was clear that any such barrier would need to be substantial to be effective, as alluded to in paragraph 44 of my decision. On this basis the production of the calculation would have been rather academic had it been forthcoming. Overall, therefore, the appellant did not behave unreasonably in respect to its noise case.

7. Regarding biodiversity, at the Inquiry the appellant's witness provided reasonable justification for the approach he had taken in the specific circumstances of the case, including why certain surveys were not completed and regarding the production of a lighting plan. While I disagreed with the appellant's case on this topic, as set out in paragraphs 47 to 56 of my appeal decision, I do not consider that the appellant's behaviour was unreasonable concerning biodiversity.

8. On the topic of sustainable travel, again I largely disagree with the appellant's case as set out in the 'Location Policy and Sustainable Transport' subsection and the 'Planning Balance' section of my appeal decision. In particular, the appellant's attempts to integrate the appeal use with Bristol Airport Limited's Airport Surface Access Strategy and to take out of use or prevent the bringing into use of off airport car parking via its unilateral undertaking had notable shortcomings. Nonetheless, while I did not agree with it in significant regards, the appellant advanced a reasonable case in respect to sustainable travel overall.

9. Accordingly, it was not unreasonable for the appellant to have pursued the appeal bearing in mind its prospects of success on the topics of noise, biodiversity and sustainable travel, notwithstanding the outcome of the appeal.

10. Regarding procedural matters, however, the appellant did act unreasonably in terms of significant elements of supporting information, which should have been in place before the appeal was made, only being completed shortly before the Inquiry finally opened. This resulted in avoidable delays.

11. 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 environmental statement 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.

12. 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 was 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.

13. This unreasonable behaviour will have resulted in unnecessary or wasted expense for the Council, 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 the Council.

Conclusion

14. Taking all the above into account I have not found the appellant behaved unreasonably in respect to the other matters raised by the Council, including in respect to DMP Policy DM30, noise, biodiversity and sustainable travel. 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 the Council to incur unnecessary or wasted expense in the appeal process, such that a partial award of the Council's costs is warranted.

Costs Order

15. 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 North Somerset Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred as outlined in my foregoing decision.

16. 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