



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 applications 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 J B Pearce Limited for an award of costs against North Somerset Council and against Bristol Airport 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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Decisions

1. Both applications for an award of costs are refused.

Reasons

2. There are two separate applications for awards of costs made by the appellant. The first is against the Council and is for full costs. The second is against Bristol Airport Limited (BAL). The application against BAL does not specify whether it is for a full or partial award of costs. In the circumstances, I have treated it as if it had been for either.
3. 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.
4. Both applications and the Council's and BAL's responses were made in writing. Consequently, there is no need for the respective cases to be repeated.

The Council

5. It is not clear to me how the alleged conduct of the Council during the application stage could have caused the appellant to have incurred unnecessary or wasted expense in the appeal process other than in terms of the Council's decision to refuse planning permission being unreasonable. As set out in my associated appeal decision letter, the appeal was dismissed, and I found in favour of the Council on all three main issues. Accordingly, as a matter of principle, there is good reason to believe that the Council could not have caused the appellant to have incurred unnecessary or wasted expense in the appeal process because of its behaviour during the application process.

6. In any event, the Council does appear to have behaved reasonably at the application stage in respect to the matters raised by the appellant. Rather than not having considered the transport assessment material that was submitted in support of the planning application, the Council appears to have simply disagreed with it. This was not unreasonable. That the appellant opted to do further work in this regard was its choice. It was under no obligation to do so in response to the Council's actions.
7. The process of putting in place the planning obligations which were before me when I determined the appeal seems to have been a lengthy and difficult one for all involved. This, though, appears to have been a consequence of the nature and extent of uncommon ground on the matters that the obligations were intended to address rather than a result of unreasonable behaviour on the part of the Council.
8. The planning obligations were ultimately embodied within a unilateral undertaking (UU). The option of a UU, in some form, rather than a bilateral legal agreement with the Council, to secure planning obligations was available to the appellant at any stage, including before the appeal was made. Indeed, in cases where there is significant uncommon ground between an appellant and the local planning authority, it is usual practice for the appellant to employ a UU to secure planning obligations.
9. I note that the Council determined the appeal planning application when the appellant's agent and planning witness at this appeal Inquiry was occupied giving evidence at another Inquiry concerning development at Bristol Airport. However, if the planning application was not in order at the time it was determined, that cannot reasonably be said to have been the responsibility of the Council.
10. At the appeal stage, the production of a draft set of suggested conditions appears to have had similar difficulties to those outlined above regarding the planning obligations. Again, the reasons for this appear to have been rooted in the nature and extent of uncommon ground rather than a result of unreasonable behaviour by the Council. Notwithstanding any such difficulties, what was produced ahead of the roundtable session on conditions was helpful.
11. Had the parties reached complete agreement on the conditions, I would still have held a roundtable session, which are a standard feature of such Inquiries. Consequently, even though I do not consider that the Council did act unreasonably in this regard, there was no delay or wasted time associated with the roundtable session. On the contrary, it was very helpful.
12. My comments above in respect to the application stage regarding the planning obligations apply equally to the appeal stage. Moreover, there is no inconsistency in the Council's approach between the case cited by the appellant in its costs application and this case. This, again, appears to be a function of the contrasting extent and nature of common / uncommon ground between the two cases.
13. The Council also appears to have acted reasonably in respect to the issues related to the effect that the proposed development would have on the living conditions of nearby residents, particularly in terms of noise, and on biodiversity. This is reflected in the outcome of the appeal and especially in paragraphs 36-46 and 47-56 of my appeal decision.

14. The Council was not required to call its highways witness. He did not appear due to unforeseen circumstances. The Council instead relied on his written evidence. In the circumstances, this was reasonable and pragmatic behaviour. It also served to save Inquiry time.
15. The Council also acted reasonably in terms of the points raised under the appellant's heading 'Substantive case failure'. This, again, is reflected in the outcome of the appeal, particularly in the 'Location Policy and Sustainable Transport' subsection and the 'Planning Balance' section, and as touched on in my foregoing comments in respect to potential planning obligations and conditions.
16. Overall, the Council's decision to refuse planning permission and its defence of the reasons for refusal that remained at the time that the evidence was exchanged were reasonable, as reflected in my appeal decision.

Bristol Airport Limited

17. The matters which the appellant seeks an award of costs from BAL relate to the Statement of Common Ground and a legal position on an aspect of the planning obligations associated with BAL's planning permission for development at Bristol Airport, including whether BAL sought to mislead me.
18. From the submissions of both parties on this matter and from what I saw and heard during the appeal process, rather than being unreasonable, it seems to me that BAL took a positive and helpful role in the Statement of Common Ground process, which was of assistance to the Inquiry.
19. Clearly there is a difference of opinion between the appellant and BAL regarding the meaning and effect of the planning obligation in question. I have made my decision on the appeal. It speaks for itself. In the context of a costs decision, it is not my role to make a judgement on the meaning or effect of a legal agreement related to a separate planning permission.
20. Nonetheless, while I have not concluded that it is either correct or incorrect, for the purposes of making this costs decision, the position advanced by BAL at the Inquiry does not appear unreasonable. Moreover, there is no substantiated evidence to indicate that BAL believed that that legal position was in anyway incorrect. On that basis, it did not seek to mislead me as alleged. BAL did not, therefore, behave unreasonably in respect to this matter of law.

Conclusions

21. Taking all the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case in respect to the Council or BAL. Accordingly, an award of costs to J B Pearce Limited is not justified.

G D Jones

INSPECTOR