



Ministry of Housing,
Communities &
Local Government

25 September 2024

Our ref: APP/W0530/W/23/3328390

John Baird
Partner
Osborne Clark

Sent by email only

Dear Sir,

**LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 320
APPEAL MADE BY BARRATT DAVID WILSON HOMES AND THE NORTH WEST
CONSORTIUM OF LAND OWNERS IN RELATION TO LAND BETWEEN
HUNTINGDON ROAD AND HISTON ROAD, CAMBRIDGE, KNOWN AS DARWIN
GREEN PHASES TWO AND THREE
APPLICATION REF: 22/02528/OUT**

APPLICATION FOR AN AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying her decision on the appeal as listed above.
2. This letter deals with your client's application for a full award of costs against the Environment Agency. The application as submitted and the Environment Agency's response are recorded in the Inspector's Costs Report, a copy of which is enclosed.
3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.
4. The Inspector's conclusions are stated at CR33-47. He recommended that your client's application for a full award of costs be refused.

Emma Hopkins, Decision Officer
Planning Casework Unit
Ministry of Housing Communities & Local Government
3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Email: PCC@communities.gov.uk

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in her report and accepts her recommendation. Accordingly, she has decided that a full award of costs against the Environment Agency, on grounds of 'unreasonable behaviour', is not justified in the particular circumstances. The application is therefore refused.
6. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.
7. A copy of this letter has been sent to the Environment Agency and South Cambridgeshire District Council.

Yours faithfully,

Emma Hopkins

Decision officer

This decision was made by Rushanara Ali MP, Parliamentary Under Secretary of State for Building Safety and Homelessness, on behalf of the Secretary of State and signed on her behalf.



Costs Report to the Secretary of State for Levelling Up, Housing and Communities

by R Barrett MRTPI IHBC

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Date 26 June 2024

TOWN AND COUNTRY PLANNING ACT 1990

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

**APPEAL MADE BY BARRATT DAVID WILSON HOMES AND THE NORTH WEST
CONSORTIUM OF LAND OWNERS.**

**OUTLINE PLANNING PERMISSION (ALL MATTERS RESERVED EXCEPT FOR
MEANS OF ACCESS) FOR UP TO 1,000 RESIDENTIAL DWELLINGS,
SECONDARY SCHOOL, PRIMARY SCHOOL, COMMUNITY FACILITIES, RETAIL
USES, OPEN SPACE AND LANDSCAPED AREAS, ASSOCIATED ENGINEERING,
DEMOLITION AND INFRASTRUCTURE WORKS
AT**

**LAND BETWEEN HUNTINGDON ROAD AND HISTON ROAD, CAMBRIDGE,
KNOWN AS DARWIN GREEN PHASES TWO AND THREE**

Inquiry held on 16-18 and 23-25 January 2024

File Ref: APP/W0530/W/23/3328390

File Ref: APP/W0530/W/23/3328390

Land between Huntingdon Road and Histon Road, Cambridge, known as Darwin Green Phases Two and Three

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Barratt David Wilson Homes and the North West Consortium of Land Owners against South Cambridgeshire District Council and the Environment Agency.
- The Inquiry was in connection with an appeal against the failure to give notice within the prescribed period of a decision on an application for outline planning permission (all matters reserved except for means of access) for up to 1,000 residential dwellings, secondary school, primary school, community facilities, retail uses, open space and landscaped areas, associated engineering, demolition and infrastructure works.

Summary of Recommendation: That the application for an award of costs is refused.

Preliminary Matters

1. The appellants made two written applications for costs at the Inquiry¹; one against South Cambridgeshire District Council (the Council), the other against the Environment Agency (EA), which is a Rule 6 party to the Inquiry. The EA and Council both provided a written response at the Inquiry².
2. Post Inquiry, following Council comment on a Secretary of State Decision (APP/W0530/W/23/3315611), the appellants withdrew the application against the Council. That against the EA remains. Given those circumstances, I deal below solely with the appellants' application for costs against the EA.

The Appellants' Application.

3. PPG paragraph 055³ warns statutory consultees that local authorities often give significant weight to the technical advice of key statutory consultees. It goes on to note that where a statutory consultee is a party to the appeal, they may be liable to an award of costs against them.
4. The EA objected to the grant of permission. The Council adopted the EA's objection as its sole reason for refusal. The Council's case was entirely dependent on the evidence led by the EA. As a Rule 6 party to the Inquiry, it is liable to an award of costs as to the unreasonable substance of its case, which has led to the need for an appeal and an Inquiry.
5. The EA repeatedly underscores that its objection to the appeal application is on its going objection to the Cambridge Water (CW) revised draft Water Resources Management Plan 2024 (rdWRMP24). The bulk of its evidence is directed to demonstrating that its objections to the rdWRMP24 are well founded.
6. However, the Statement of Common Ground on water matters records the agreement of all parties that the adequacy of the rdWRMP24 is not a matter that

¹ IQ28

² IQ32&33

³ Ref ID: 16-055-20140306

this appeal Inspector/Secretary of State can determine or even opine upon. Thus, even were the EA's evidence supportive of its objections to the rdWRMP24, those objections to the rdWRMP24 do not of themselves support the reason for refusal on this planning appeal.

7. Without exonerating the Council for adopting the EA's objection (in contrast to its rejection of it in the Brookgate case⁴), that objection is the reason for the appeal. The basis of its continued objection was clear in the EA's questions to the appellants: that permission should be refused (in the absence of a Grafham-linked condition) because there was (a) 'evidence of regulatory failure' in the previous WRMPs; and (b) no guarantee that even an acceptable WRMP24 would be adhered to by CW.
8. The EA is the regulator, and the EA holds the water undertaker to account to deliver a given WRMP, that is an entirely unreasonable basis of objecting to a development scheme. On that basis alone, costs should be awarded.
9. The EA evidence to show a theoretical or illustrative impact on water bodies from the proposed development is on an unrealistic basis that CW would abstract all the Darwin Green demand from one location, in the catchment of at river identified at most risk, that abstraction equals reduction of flow 1:1, and that the Darwin Green demand is not already in the demand figures (which, of course, as committed development, it is).
10. Two of the surface water bodies (SWBs) identified by the EA (Weedon Brook and Hoffer Brook) are not considered to be at risk even from a full WRMP extraction (even on the EA's mistaken reliance on modelling Scenario S27) and so can be discounted. But even for the other three she mentions (Granta and Cam), the EA did not seek to actually model the effect of this illustrative development impact on SWB flows nor the resultant flows on predicted WHPT ASPT or LIFE scores. All this in the context, as noted above, that the SWBs in question are recording consistent high invertebrate WFD status.
11. As such, allegations of harm are vague, generalised, inaccurate and unsupported by objective analysis or the evidence actually led; even the underpinning objection to the rdWRMP is not supported by evidence of current decline or predicted future deterioration; the restrictive planning condition insisted upon is not necessary; the EA's opposition is to a development which should clearly be permitted on a s.36(6) basis; it is maintained on a premise contrary to settled caselaw and national policy; the EA appears never to have reviewed whether its legitimate, although evidentially unfounded concerns about the rdWRMP24 within the jurisdiction of the Defra Secretary of State amounts to a justification for the withholding of planning permission by the DLUHC Secretary of State.
12. A disturbing remark by the EA in oral evidence suggested the EA objecting to all major development in Cambridge was 'pioneering'. It suggested elsewhere that it 'has no agenda'. The EA, operating in its own regulatory regime through the WRMP process in front of the Defra Secretary of State, has chosen to enter a separate regulatory process (planning), which is under the jurisdiction of the DLUHC Secretary of State, objecting to major development in Cambridge, a

⁴ APP/W0530/W/23/3315611

matter expressly supported by the DLUHC WMS (Written Ministerial Statement), until such time as a preferred water supply resource is in place under the WRMP.

13. The planning regime should be astute to head off any such inter-departmental/inter-agency turf war. An award of costs is one mechanism for reminding the EA that the two regulatory regimes are complementary not antagonistic, and the WRMP process is not there to constrain development growth until a version that the EA agrees is published.
14. For all of the above reasons a full award of costs is justified against the EA for its unreasonableness as to the substance of its objection.

Post Inquiry Comments in respect of the Broadgate Decision and Joint Statement

15. The appellant withdraws its application for costs against the Council, noting that the Council correctly concedes that there is no need for a condition restricting occupation until either approval of the WRMP or the operation of the Grafham Transfer.
16. The EA continues to oppose the appeal scheme despite the Secretary of State Brookgate Decision which concluded that the statutory process and other measures in place with respect to water supply were sufficiently robust to avoid unacceptable demand on water resources and potential harm to ecological interests and that the optional condition delaying occupation until the Grafham Transfer was operational was not necessary (Secretary of State Decision Letter paragraph 37).
17. Accordingly, the EA's intransigence in the face of *both* the Secretary of State's Decision and the Inspector's recommendation in the Brookgate Decision is, in and of itself, a further ground for costs. In this light, whilst referenced in the context of costs awards against appellants, the appellants note PPG paragraph 0531, which lists failure to take account of similar recent appeal decisions as a type of behaviour which may give rise to a substantive award of costs.

EA Response

18. The EA is disappointed that the appellants pursue a costs application, particularly as they did not make such an allegation before the penultimate day of the Inquiry and written costs received late, contrary to PPG paragraph 55.
19. That paragraph also sets out that where a local planning authority relies on the advice of a statutory consultee in refusing a planning application, there is an expectation that the consultee in question will substantiate its advice at appeal. Therefore, the EA is a Rule 6 party to this Inquiry.
20. The EA has put considerable time into defending its objection to the appeal development and responds to the points made.
21. The existence of a WRMP does not preclude an Inspector from addressing issues relating to potable water supply to new development where there are concerns regarding its sustainability.
22. Given that CW is providing the water supply to the appeal development, in the rdWRMP period and beyond, it is necessary to consider the evidence that

underlies that process. Further, it is appropriate for the EA to refer to CW's poor performance in exploring regulatory failure with the appellants. And there is no legal requirement that any water company comply with a WRMP.

23. The EA is a consultee on WRMPs. It does not have any powers to ensure delivery. The EA is not responsible for the water supply circumstances that arise in the Greater Cambridge region. The EA is furthering its statutory duties by maintaining objection to the appeal development, rather than failing in its statutory duties. In any event, this matter should not form part of a costs application.
24. The illustrative assessment of potential water supply impact of the appeal development in isolation is an attempt to provide some materiality of the implications of groundwater abstraction necessary to provide for the appeal development. That is one aspect of the EA's case and has not in itself put the appellants to wasted costs.
25. Points made regarding compliance with the development plan, and weight to be attached to the EA objection just rehearse the merits of the appeal. The EA's objection is reasonable even if the appellants disagree with it.
26. The appellants mischaracterise the EA's case as depending upon actual evidence of WFD deterioration linked to CW abstraction. It is about the risk of such deterioration given the various strands of EA evidence, not yet unconfirmed WFD deterioration. The appellants continue to misconstrue the CW evidence. They wrongly dissect the EA evidence linking current and future abstraction to deterioration risks and fail to properly understand the evidence taken together. Given the weight of evidence the EA presented, it is not guilty of proof by assertion as the appellants suggest.
27. An EA comment that objecting to planned development in this region was pioneering is not reason for a costs application. The EA did not have any agenda in defending this appeal. The appellants use a costs application to pursue bad points, unfairly questioning the good faith of an EA witness. The point cannot have any connection with wasted costs. The EA witness explained that this region was the only where the ER was objecting to planned development due to the risk of deterioration to water bodies.
28. The EA does not promote an inter-departmental/agency turf war. It simply raises concerns related to the consequences of development from water supply. It agrees that the two regulatory regimes are complementary and interlinked. The appellants acknowledged in oral evidence that the appeal was pursued to test the EA's evidence.
29. The cost application should be refused. The appellant did not seek clarification as to its position regarding water supply from either CW or the EA. It therefore pursued the appeal on false assumptions. And unfounded assertions. It did not carry out its own assessment. Its stance has been hostile rather than constructive and allegations that the EA evidence has not been clear need to be considered in that light.

Post Inquiry Comments in respect of the Broadgate Decision and Joint Statement

30. The EA was not a main party at the Brookgate Inquiry. Evidence on the impacts of water abstraction was therefore not presented to the level of detail that it was in this Inquiry.
31. In responding to the Inspector's request for comments on the Brookgate Decision it was reasonable for it set out its position on the Joint Statements.
32. The EA's is not unreasonable, and it is difficult to understand what expense can have been caused to the appellant responding to a written request from the Inspector.

Inspector's Conclusions

33. The PPG advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
34. Dealing with the appellants' claims on a chronological basis, for the reasons set out in my report, in the circumstances of this appeal, notwithstanding the WRMP process, the sustainable supply of water to the appeal development is a material consideration. The EA relies on the results of CW's modelling work that underpins the CW WRMP. As that underlies its concerns regarding the appeal development, in doing so the EA has acted reasonably.
35. The EA objects to the current version of the CW WRMP (the revised draft WRMP). However, that is one aspect of its case, and its evidence does not wholly rely on that matter. In raising the matter, the EA therefore acted reasonably.
36. The EA suggests that CW's past performance in previous WRMPs is one reason for the current water circumstances in the Greater Cambridge region. In pursuing this matter at appeal therefore, it acted reasonably. The EA's position as regulator in respect of CW's WRMP, and any suggested failure in that duty, is not a matter for the appeal costs regime and is therefore not considered further.
37. The EA's theoretical/ illustrative assessment of the appeal development's impacts on SWBs aimed to provide some materiality to the implications of groundwater abstraction necessary to serve the appeal development. It is noted that the effect of the illustrative impacts on SWB flows or the ecology scores were not modelled. However, its limitations were set out which enabled the evidence to be assessed in that light. That evidence was considered alongside the rest of the EA's case. Overall, in this respect the EA acted reasonably.
38. The EA presented a case to evidence the risk of WFD deterioration linked to water abstraction. I have assessed that in my report. In presenting that case, the EA provided various strands of evidence. It is common ground, due to the complex network in the CW water resources zone, it is not possible to determine the exact location of abstraction for any specific development and that the impacts in terms of water demand will therefore be felt cumulatively along with abstraction to serve other planned development. On that basis, the EA claimed that the appeal development would add to any risk of deterioration evidenced. Overall, notwithstanding evidence of actual deterioration due to water abstraction, the EA acted reasonably in presenting that case.

39. Given my conclusions on the modelling evidence that underpins the CW WRMP, and the implications for any current and predicted risk to deterioration in WFD terms, in presenting that case the EA acted reasonably. Given the EA's position it did not act unreasonably in requiring a planning condition linking occupation of the appeal development to the Grafham Transfer.
40. Given my conclusions on the main issue in this case, the EA's approach was not contrary to settled case law. Given the circumstances of this appeal and my conclusions on the substantive issue, the application of s38(6) of the Town and Country Planning Act 1990, does not automatically indicate that the appeal development should have been permitted/allowed, having regard to other material considerations.
41. In the same way, whilst national policy evolved throughout the appeal process (with the December 2023 WMS and March 2024 Publications), that is a material consideration in the appeal process and does not automatically indicate that a planning application/appeal should be permitted/allowed. In this regard, the EA's position was reasonable.
42. The EA's oral evidence regarding its objection to all major development in the region does not necessarily indicate that it was acting in a manner other than in furtherance of its statutory duties. In this regard it acted reasonably.
43. The EA raises concerns regarding the sustainable water supply to the appeal development. It objects to the appeal development on that basis. It accepts that the planning and WRMP regimes are complementary and interlinked. The WRMP should ensure that supply to be delivered in a WRMP would be established and uncontroversial in advance of planning proposals coming forward. That does not apply to this case. Whilst I accept that the planning regime should help avoid government departmental arguments, in this instance it could not be avoided. However, those circumstances do not give rise to unreasonable behaviour.
44. Post Inquiry, the Brookgate Decision was issued. That appeal raised similar issues to the appeal development with regard to water supply. It is noted that the EA did not change its position in light of the Secretary of State's conclusion that the March 2024 Joint Statement should deliver water savings to meet future water needs, and as such matters relating to water supply and quality are neutral in the planning balance. In that regard I consider that the EA acted unreasonably. However, as that Decision was issued post Inquiry, just prior to consideration of this appeal by the DLUHC Secretary of State, that matter has not directly caused the appellants to incur unnecessary or wasted expense in the appeal process.

Conclusion

45. Whilst I did not agree with all of the EA's case, it presented reasonable and objective evidence to substantiate its case in respect of its concern regarding a sustainable water supply to the appeal development. In that respect, I consider that it has acted reasonably.
46. However, in continuing to defend its position in light of the Brookgate Decision it acted unreasonably. However, as that was post Inquiry, for the reason given, that matter has not directly caused the appellants to incur unnecessary or wasted expense in the appeal process.

Recommendation

47. It is recommended that the application for an award of costs be refused.

R Barrett

INSPECTOR

COSTS DOCUMENTS

IQ28	Appellants' costs application
IQ32	EA's response to the appellants' costs application
IQ33	Council's response to the appellants' costs application