



Ministry of Housing,
Communities &
Local Government

3 December 2024

Our ref: APP/D2320/W/22/3295556

Adele Hayes
Chief Planning Officer
Chorley Borough Council
Town Hall, Market Street
Chorley
Lancashire PR7 1DP

By email only

Dear Madam

**LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 320
APPEAL MADE BY THE MINISTRY OF JUSTICE
AT LAND ADJACENT TO HMP GARTH AND HMP WYMOTT, LEYLAND,
LANCASHIRE
APPLICATION REF: 21/01028/OUTMAJ**

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 application for a partial award of costs against the developer. The application as submitted and the developer'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.

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

4. The Inspector's conclusions are stated at CR33-40. He recommended that your application for a partial award of costs be refused.
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 his report and accepts his recommendation. Accordingly, she has decided that a partial award of costs against the developer, 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 developer.

Yours faithfully,

Emma Hopkins
Decision officer

This decision was made by Matthew Pennycook MP, Minister of State for Housing and Planning on behalf of the Secretary of State, and signed on his behalf



Costs Report to the Secretary of State

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Date 16 September 2024

Town and Country Planning Act 1990

Chorley Borough Council

Appeal by the Ministry of Justice

Costs Report

(Chorley Borough Council against the Ministry of Justice)

Dates of Re-opened Inquiry: 25-27 March, 23-24 and 26 April 2024

Land adjacent to HMP Garth and HMP Wymott, Leyland, Lancashire

File Ref: APP/D2320/W/22/3295556

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Land adjacent to HMP Garth and HMP Wymott, Leyland, Lancashire

- 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 Chorley Borough Council for a partial award of costs against the Ministry of Justice.
- The inquiry was in connection with an appeal against the refusal of planning permission for a hybrid planning application seeking outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; outline planning permission for a replacement boiler house (with all matters reserved except for access); and full planning permission for a replacement bowling green and club house (Class F2(c).

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

Background Matters

1. The Council's costs application was made in writing on the final day of the reopened Inquiry (26 April 2024). The Ministry of Justice (MoJ) provided a written response on 1 May 2024. The Council did not provide any final comments. The submissions for the Council and the response by the MoJ are set out below.

The Submissions for Chorley Borough Council¹

2. The Council seeks a partial award of costs, in relation to the A581 / Ulnes Walton Lane junction (the junction) issue, against the Ministry of Justice (the appellant) on the basis that their behaviour at this appeal has been unreasonable. The definition of unreasonable is taken from paragraph 031 of the Planning Practice Guidance (PPG). It is a requirement that any unreasonable behaviour has led to the Council incurring unnecessary or wasted expense in the appeal process, with PPG paragraph 032 setting out examples of potential costs.
3. The Council submits that the appellant has been substantively and procedurally unreasonable which has caused the Council significant costs in addressing the junction issue. PPG paragraph 053 sets out that an appellant is at risk of costs if the appeal or grounds of appeal had no reasonable prospect of succeeding.
4. The Council submits that the appellant was substantially unreasonable in putting forward the 2023 design given it had no real prospect of safely mitigating the impacts at the junction. As set out by the Council's witness, there were 4 fundamental flaws with the 2023 design. One particular element, addressed in the 2024 design, was that the 2023 design was accepted to break the applicable Design Manual for Roads and Bridges (DMRB) standard for visibility at the junction. This was a safety concern raised in the independent Road Safety Audits (RSA). DMRB requires 35m visibility and the 2023 design provide 16.6 to 17.8m.
5. These were not preferences of the DMRB. They were accepted to be 'shall' requirements which would require express consent from the Local Highway Authority (LHA) for a departure from the standard to deliver the 2023 design.

¹ Taken from Core Document Q16a

There was no clear and express evidence from the LHA that they would grant consent. Given the unchallenged severe safety implications set out by the Council's witness, the Inspector and Secretary of State (SoS) can conclude such consent would not be granted. The VIA RSA highlighted that emerging side road vehicles could collide with A581 traffic due to restricted visibility and A581 westbound traffic could collide with emerging side road vehicles.

6. During the evidence in chief for the appellant's witness, the 2023 design was mentioned only once, in response to a general question about the evolution of the 2024 design. The 2023 design was all but abandoned by the appellant at the Inquiry because it was substantively unreasonable. However, it was not formally abandoned which brings us onto the procedural unreasonableness.
7. PPG paragraph 052 gives examples of procedural unreasonableness including resistance to or lack of cooperation with the other party or parties in providing information; delay in providing information or other failure to adhere to deadlines; and introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen.
8. A brief chronology helps to illustrate the unreasonable procedural behaviour of the appellant:

19 January 2023:	SoS Decision Letter highlighting issues with the junction requiring mitigation
February 2023:	RSAs provided internally to the appellant raising the fundamental safety issues with the 2023 design, with the VIA RSA recommending <i>that the visibility is improved by acquisition of a portion of the adjacent land, to allow the highway boundary to be set back; should this not be possible, a redesigned layout may be required or failing that, an alternative method of junction control may need to be explored.</i>
1 March 2023:	Appellant provided 2023 design as additional evidence (Core Document M3)
8 March 2023:	Council's expert, within 7-day period, raises initial concerns with 2023 design (Core Document N2)
17 March 2023:	Appellant responds maintaining 2023 design (Core Document M5)
August 2023:	Mr Yeates' proof for the appellant promotes 2023 design (Core Document M6)
19 September 2023:	Re-opened Inquiry due to open but adjourned due to availability issues
November 2023:	Mr Yeates' rebuttal proof for the appellant promoted the 2023 design (Core Document M9)
February 2024:	Mr Yeates' addendum proof introduces 2024 design for first time (Core Documents M10 and M10a)

March 2024: Mr Riley's rebuttal proof for the Council (after permission granted by the Inspector) addressing the 2024 design (Core Document N9)

25 March 2024: Inquiry re-opened

9. A few stark points emerge from the above timetable. The first is that from the appellant being told in the independent RSA that the 2023 design was unsafe and that they should buy adjoining land to improve visibility (in February 2023) it took them a year to tell the other parties they had done so and produce the 2024 design.
10. Given the appellant had 7 months before they submitted proofs, what efforts were made to acquire the land before this point, and why were the parties not made aware of it until a month before the Inquiry? Especially given the date on the 2024 design plan at CD M10a Appendix A (page 4) that the final scheme, with newly acquired land site boundaries, was drawn up on 24 October 2023.
11. Secondly, while the appellant cannot be blamed for the Inquiry delay in September, if the Inquiry had gone ahead, it would have been on a design which the appellant would go onto not either challenge the criticism or support the merits of in evidence during the two weeks of the re-opened Inquiry. It illustrates the lateness of the volte face in the appellant's case.
12. The third point is then linked to what the appellant did not do in February 2024. They did not abandon the 2023 design. Instead, at paragraph 6.2.1 of CD M10, the appellant invited the Inspector to consider the 2024 design and noted that they are committed to delivering either the 2023 or the 2024 design as both accord with design standards.
13. This is despite the fact as Mr Yeates accepted in cross-examination that the 2024 design would be preferable to the 2023 design and there was no world in which the 2024 would be unacceptable but the 2023 design acceptable. This is why, by February 2024, the 2023 design was 'dead in the water'. While a reasonable appellant would abandon it, this appellant maintained that both designs would be justified. Such an approach has led the Council to incur unnecessary and wasted expense.
14. The first element is the cost spent by the Council's expert in producing written evidence to address the 2023 design (and such evidence being reviewed by Counsel). This includes the original technical note (CD N2) and Mr Riley's proof (CD N3) which contain preliminary and then detailed evidence as to why the 2023 design was unacceptable. This cost arose out of the substantively unreasonable behaviour in putting forward the 2023 design which had no reasonable prospect of success.
15. The next element is the cost spent by the Council in addressing the 2024 design, especially to produce the Rebuttal Proof at short notice (and such evidence being reviewed by Counsel). This arises from the procedural unreasonableness of the appellant failing to provide information (or give advanced notice) that there was going to be a significant shift in their case a month before the Inquiry was to re-open
16. The third element is the cost incurred through the use of inquiry time addressing the 2023 design, including Mr Riley's lengthy and detailed evidence in chief on

the matter, and time in opening and closing submissions. This could have been entirely avoided if, despite their previous unreasonableness, the appellant had formally abandoned the 2023 design once they published and relied upon the 2024 design. It was clearly entirely academic and unreasonable to maintain that both were justified, and the failure to do so necessitated the other parties to formally address it (and then not be challenged by the appellant). While it would not have entirely negated the costs award sought, it would have saved inquiry time and the cost incurred to the Council in addressing the 2023 design. The failure to do so was both substantially and procedurally unreasonable.

17. Therefore, the appellant has been substantially and procedurally unreasonable in the way in which they have sought to address the Inspector's and SoS's concerns on the junction. This was particularly through the unreasonable reliance on a clearly unacceptable 2023 design and the last-minute revelation of the 2024 design, which despite clearly rendering the 2023 design academic was formally maintained by the appellant.
18. This substantive and procedurally unreasonable behaviour led the Council to incur unnecessary cost in addressing the 2023 design and then additionally addressing the 2024 design. On this basis the Council respectfully seek an award of the partial costs in relation to the junction.

The Response by the Ministry of Justice (the appellant)²

Introduction

19. It is regrettable that the Council failed to adhere to PPG paragraph 035 that as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. The contents of the costs application could clearly have been made in writing prior to or during the Inquiry which would have enabled the appellant to respond during the Inquiry.
20. The costs application argues that the appellant behaved unreasonably in putting forward the 2023 design given it has no real prospect of being found safe and suitable. It also argues that the appellant failed to give notice of the 2024 design earlier and behaved unreasonably in not abandoning the 2023 design. The application claims this resulted in unnecessary or wasted expense in producing written evidence in August 2023 addressing the 2023 design; producing written evidence in March 2024 addressing the 2024 design; and preparing for and addressing the 2023 design at the Inquiry. The appellant wholly rejects the contentions put forward by the Council.

The appellant has not behaved substantially unreasonably

21. A wealth of detailed expert evidence has been put forward which demonstrates that the 2023 design would safely mitigate the junction impacts. This can be found in particular at Core Documents M3 (section 5) and M9 (section 8). To summarise:
 - (a) The Inspector and SoS both originally found that without a design for the mini roundabout and traffic modelling to demonstrate the effect, it

² Taken from CD Q18

- could not be demonstrated that the proposed works would resolve junction capacity issues.
- (b) A mini roundabout has always been the preferred mitigation solution by the LHA and the appellant's closing submissions detail the safety and capacity benefits of a mini roundabout in principle at this location.
 - (c) The appellant considered the Inspector and SoS's concerns and produced the 2023 design as a preliminary junction design together with modelling evidence. The 2023 design (and indeed the 2024 design) are only necessarily preliminary designs at this stage, as the highways measures will be subject to detailed design through the section 278 process and the associated RSAs at each appropriate design stage.
 - (d) The 2023 design included a raised table, speed cushions on the A581, three new lighting columns on the Ulmes Walton Lane approach, reduced speed limit signs, a reduced inscribed central diameter, and dragon's teeth on all approach arms.
 - (e) The junction analysis shows that the 2023 design would mitigate the effects of the development and would provide a betterment compared to the existing junction layout without development traffic. The Council has not produced any junction analysis to dispute this. As Mr Yeates explained at the Inquiry, capacity has an important link to safety in reducing risk of driver frustration.
 - (f) Detailed swept path analysis was undertaken for all vehicles on the 2023 design together with an analysis of the PIA data in this location.
 - (g) DMRB visibility standards are not requirements for non-trunk roads such as the A581 and Ulmes Walton Lane and therefore a departure from guidance is not technically necessary. Nevertheless, Mr Yeates addressed the design departure process in relation to visibility and the issues raised in the RSAs including a written designer's response.
 - (h) Mr Yeates also addressed these issues in evidence at the Inquiry and explained that the departures are safe and acceptable given the proposed traffic calming to reduce speeds on the junction approaches and the capacity improvements compared to the existing junction. He also explained that meeting standards does not automatically mean a junction design is safe or not. A holistic judgment is required to be made considering all the circumstances. He relied on previous appeal decisions³ which consider similar departures and visibility issues.
 - (i) Mr Yeates gave evidence of several mini roundabouts in Lancashire which have substandard visibility and which have a low level of recorded accidents, which shows there is not a direct correlation between a design departure and a poor highway safety record. He also explained that providing additional visibility can sometimes increase risk of accidents as it encourages speeding.

³ CD M7 Appendix D

- (j) Throughout developing the 2023 design, the appellant has consulted with the LHA who reviewed the design and concluded it would suitably and safely address the junction capacity issues with development. In particular, the LHA acknowledged the designer's response to the RSAs and the detailed design work which will follow with the S278 process.
22. On that basis, it is clearly not right to say that the 2023 design has no reasonable prospect of being found safe and suitable. The acceptability of both designs is a matter of expert judgment upon which reasonable professionals may differ in their opinions. Mr Yeates, Mr Riley and Mr Eves have all disagreed with each other to varying extents, but mere disagreement does not mean another expert's view is unreasonable. On this issue of expert judgment, the appellant has reasonably put forward detailed evidence why the 2023 design is safe and suitable and not acted substantively unreasonably in putting forward the 2023 design.

The appellant has not behaved procedurally unreasonably

23. The first allegation is that the appellant failed to give notice of the 2024 design earlier than February 2024. There is no merit in this argument. The original commencement date for the reopened Inquiry was 19 September 2023. In the evidence for this date, the appellant was only putting forward the 2023 design. For the reasons summarised above, the appellant's position was (and still is) that the 2023 design is a safe and suitable mitigation solution at this junction. The appellant had decided there was insufficient time available to purchase the additional land prior to the start of the reopened Inquiry in September 2023 and so no alternative design was being pursued and no drawings had been drawn up. Therefore, there was nothing to disclose prior to September 2023.
24. On 6 September 2023, the parties were notified that the Inquiry would be postponed and then informed later that the new commencement date was 25 March 2024. The Inspector set a timetable stating that updated highways proofs could be submitted 4 weeks before the Inquiry reopened (26 February 2024) provided it focused only on material changes arising since existing proofs were produced. Allowance was also made for rebuttals to any updated evidence.
25. Given the extra time available, the appellant only then decided that it might be possible to pursue the option of buying additional land and putting forward an alternative design. A drawing using additional land was drawn up on 19 September 2023 to progress thinking, and negotiations advanced with landowners. Complications in relation to complex land ownerships prolonged negotiations meaning that contracts were only exchanged on 26 February 2024.
26. In accordance with the timetable, the appellant issued the updated highways proof on 26 February 2024. This detailed that a material change had arisen, namely the ability to purchase additional land, and that the 2024 design was being put forward as an alternative. The 2024 design is not dramatically different to the 2023 design. It did not represent a significant change to the appellant's case and the new evidence was accepted by the Inspector. An adjournment was not necessary to deal with this updated evidence. The Council was given an extension for rebuttal evidence and was able to submit rebuttal evidence in ample time before the Inquiry reopened on 25 March 2024.

27. The appellant could not have reasonably disclosed the 2024 design any earlier than 26 February 2024 given that contracts were only exchanged on that same day, otherwise this would have prejudiced ongoing commercial negotiations. The evidence submitted on the 2024 design was in accordance with the Inquiry timetable for updated evidence. Accordingly, the appellant did not act with any unreasonable delay and disclosed the 2024 design as soon as it was reasonably able to, within the timetable, with ample time for rebuttals, and no adjournment was necessary.
28. The second allegation is that the appellant behaved procedurally unreasonable in not abandoning the 2023 design. The Council's position that the appellant has maintained that both the 2023 and 2024 designs are acceptable is factually correct. However, the argument that this was an unreasonable position to take is clearly mistaken. The appellant has provided detailed evidence as to why the 2023 design is acceptable. The 2024 is the preferable alternative, but that does not place an obligation on the appellant to withdraw all previous evidence relating to the acceptable 2023 design, which is already before the Inspector. There is nothing unreasonable or unusual in presenting two acceptable designs and there has been no procedurally unreasonable behaviour by the appellant.

There were no unnecessary or wasted costs

29. The first element of costs claimed is producing written evidence to address the 2023 design. For the reasons set out above, on this matter of expert judgment, it is clearly not right to say that the 2023 design has no reasonable prospect of being found safe and suitable and there is no substantive unreasonable behaviour here. In the lead up to the original commencement date of 18 September 2023, there was no suggestion from the Council that it viewed the 2023 design to represent unreasonable behaviour. This is an argument that is only opportunistically being pursued now. For the reasons set out above, it was reasonable for the appellant to maintain both designs. Thus, the costs of producing written evidence on the 2023 design was not caused by unreasonable behaviour.
30. The second element of costs claimed are the costs spent producing rebuttal proofs to the 2024 design in March 2024. For the reasons set out above, the appellant did not behave procedurally unreasonably in this regard and both parties had ample time to provide rebuttal evidence. Thus, these costs were not caused by any unreasonable behaviour. Moreover, even if this behaviour was procedurally unreasonable, the costs of responding to the 2024 design would have arisen in any event. PPG paragraph 052 states that costs can only be claimed for work that would not otherwise have arisen. Even if the appellant had notified the other parties of the 2024 design earlier, the parties would have still incurred costs in providing written evidence in response.
31. The third element of costs claimed are the costs incurred in Inquiry time on the 2023 design or the costs incurred in preparing to deal with the 2023 design. For the reasons set out above, throughout the written evidence, live evidence and closing submissions, the appellant has maintained that both designs are acceptable, with the 2024 design being preferred. There is nothing unreasonable in this approach and thus no wasted costs were caused. In addition, there is a large overlap in the work and time spent addressing the two designs given their similarities. Mr Riley spent a long time discussing the 2023 design and then

addressed the 2024 design very quickly. Therefore, even if any wasted costs are found, then the costs only attributable to the 2023 design will be very limited.

Conclusion

32. In conclusion, the costs application is neither well founded nor justified. The appellant has not behaved substantively or procedurally unreasonably, and this has not resulted in any wasted or unnecessary costs.

Conclusions

33. The Planning Practice Guidance advises that costs may 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. The Council has submitted that the appellant behaved unreasonably on both substantive and procedural grounds.
34. Dealing with the substantive grounds first, the Council contends that the appellant persisted with the 2023 design despite it having no real prospect of safely mitigating the junction impacts. It will be seen from my supplementary report at paragraph 13.37 that I have identified serious problems and uncertain effects with the 2023 design to the extent that it would have an unacceptable impact on highway safety. Nevertheless, the 2023 design was put forward by the appellant as the first solution to address my concerns and the concerns of the SoS. It was subject to review and consultation and was not rejected out of hand as an option, although the appellant came to prefer the 2024 design. Ultimately it was a matter of expert and planning judgment. Therefore, the appellant did not behave unreasonably by persisting with the 2023 design.
35. Regarding the procedural grounds, it is evident that the appellant was seeking to acquire additional land around the junction from September 2023. It also appears that work leading to the 2024 design was underway around a similar time. It is unfortunate that the appellant felt unable to share this information, even confidentially, with the other main parties until February 2024. However, I recognise that there may have been commercial sensitivities involved with any land negotiations and purchases. There was also an allowance for updated proofs of evidence to be received a month before the Inquiry was due to reopen in March 2024.
36. Had the reopened Inquiry gone ahead in September 2023 as originally planned, the 2024 design may not have ever been considered. Given the concerns I have identified with the 2023 design, this may have exacerbated the appellant's position regarding highway safety. However, through no fault of the main parties, the Inquiry was delayed in September 2023. As noted above, an opportunity was then afforded for updated proofs to address any material changes that may have arisen since the proofs were first drafted. Therefore, while regrettable, the later disclosure of the 2024 design did not represent unreasonable behaviour procedurally.
37. The Council contends another procedural ground in that the appellant did not abandon the 2023 design either before or during the Inquiry. However, while the appellant's witness (Mr Yeates) may have accepted under cross-examination that the 2023 design was 'dead in the water', this was only once his evidence had been tested by the parties. Mr Yeates' position beforehand was that both designs

were acceptable, and the purpose of an Inquiry is to challenge such positions. I have already found that there are no substantive grounds of unreasonable behaviour in terms of persisting with the 2023 design, so this position was not procedurally unreasonable either.

38. The Council incurred additional expenses in the appeal process through the assessment of the 2023 and the 2024 designs, both before the Inquiry reopened and during sessions with relevant witnesses. However, given no unreasonable behaviour on substantive grounds has been demonstrated, these expenses were not unnecessary or wasted in terms of the substance of any additional work.
39. It was regrettable that the Council's witness did not have more notice of the 2024 design, but the evidence was admissible as part of the updated proofs stage, and the Council was afforded more time to provide rebuttal evidence. Therefore, the lack of unreasonable behaviour on procedural grounds means that the above expenses were not unnecessary or wasted in terms of any timings.
40. Overall, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Recommendation

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

Tom Gilbert-Wooldridge

INSPECTOR