
Costs Decision

Inquiry commenced on 17 October 2023 and closed on 10 September 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

**Costs application in relation to Appeal Ref: APP/Y0435/C/21/3289543
Former Brook End Nurseries, Brook End, North Crawley, Newport Pagnell,
Buckinghamshire MK16 9HH**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr M Connors for a full award of costs against Milton Keynes Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised change of use of the site for the stationing of mobile homes and caravans for human habitation and related unauthorised development.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr Connors

2. The costs application was made in closings at the Inquiry. As stated on the final page of Notes to Oral Closing Submissions on Behalf of the Appellant, the submissions rely on Part 1 of those Notes and are also set out in Section 6 of the Rebuttal Evidence of Mr Woods (submitted in early October 2023 immediately prior to the commencement of the Inquiry).
3. The application is made on the following summarised grounds:
 1. The Council did not initially object to the development on flood risk grounds, but subsequently developed such a case without properly advising the appellant as to when this would occur. In addition to this procedural ground, it is alleged that the Council's case on flood risk is unreasonable since its own local plan relies upon its Strategic Flood Risk Assessment (SFRA), which in turn relies on the Environment Agency's (EA's) Flood Maps (which indicate most of the site including where the caravans are sited lie within Flood Zone 1).
 2. The Council's continued resistance in terms of its allegation of the loss of best and most versatile agricultural land (BMV) in the face of all the evidence is unreasonable and has wasted the appellant's time defending this issue at the Inquiry.
 3. The Council alleged that the occupiers had no 'genuine need' to live on the site, although it was unclear why since it knew who was occupying the site and why, and Mr Jarman's evidence confirms that there is unmet need for gypsy/traveller pitches in the Borough.

4. The Council did not engage with the appellant in trying to firm up/complete a general Statement of Common Ground in advance of the Inquiry. This was procedurally unreasonable and failed to narrow down the issue at the appeal.
5. The Council unreasonably sought to get the appeal declared invalid on the grounds that Mr Connors was not an owner of the land.
6. The Council does not explain in the notice why the development is unacceptable: it merely says that it is unauthorised. Despite numerous requests for clarification, the Council refused to reveal its case until the exchange of Proofs.
7. The Council wasted time and caused the first adjournment of the Inquiry in October 2023 when Ms Bolton sought to question the appellant's reasons for leaving Toddbury Farm, where he lived previous to coming here. She wasted time because she said the Land Registry document (and arguments) she introduced on 18 October were allegedly important in examining the appellant's evidence in this respect, but she made no submissions on this in her Closings.

The response by the Council

4. The response was made in writing in Section 4 of Mr Whittaker's Rebuttal Proof (submitted on 13 October 2023), in response to the contents of the application in Mr Woods Rebuttal Proof.
5. The Council responds to the applicant's summarised grounds above as follows:
 1. The Council advised the appellant's agent that the original Flood Risk Assessment (FRA) was defective on 25 October 2022. An accurate revised FRA was not submitted until 30 June 2023, which led to the engagement of an external flood risk expert (Mr H) later that summer and culminated in Mr H's Proof on 26 September.
 2. There remains doubt as to whether the site is Agricultural Land Classification (ALC) Grade 3a/b or 4 because the ALC Maps are not sufficiently accurate for use in the assessment of the quality of land on individual fields.
 3. Three occupants submitted statements but John McCarthy did not and so it was unclear how it could be tested whether he had a genuine need to live at the site, although it is not disputed that there is unmet need for gypsy/traveller pitches in the Borough, as per Mr Jarman's Proof.

The Council has not specifically rebutted grounds 4-7 above in Mr Whittaker's Rebuttal Proof but these issues were addressed in evidence or in the Round Table Discussions and I address them in my reasoning below.

Reasons

6. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.

7. By way of background to my assessment of this costs claim, I repeat in the next paragraph what I say in paragraph 5 of my appeal decision.
8. The Inquiry, originally scheduled for 4 days, took twice as long and had to be adjourned twice, first to March and then again to September 2024 from the original days schedule in October 2023. The first adjournment was necessary because the Council insisted on introducing a new document (the Land Registry Title of Plots 32 & 32D Toddbury Farm, where the appellant previously lived) as it was allegedly likely to be central to the Council's interrogation of the appellant's witnesses, which the appellant argued he needed some time to consider, as well as some of the witnesses not being available. The second adjournment was necessary because the Further Flood Studies Report and Revised Sustainable Drainage Strategy produced by the appellant had not been passed onto the Council, which was necessary for the Council to fully understand the appellant's case on flood risk before it could properly contribute to the Round Table Discussion (RTD) on this issue.
9. These adjournments unnecessarily prolonged not only the total time the Inquiry sat but the overall extended time period for dealing with the appeal, because the advocates and Mr Woods were not available sooner. The general bad temper in which the Inquiry was conducted did not help, particularly the constant interruptions of proceedings, especially in the examination/cross-examination of witnesses by the opposing barrister, despite my pleas to them both not to do so.
10. I address the applicant's summary grounds below:
 1. The appellant failed to initially assess flood risk properly in that its original FRA was defective because it did not accurately assess the development on the site. This led to his submission of a new revised FRA, which had to be properly considered by the Council, which it did in a reasonably timely fashion. Mr H's Proof and subsequent Comments that address Mr Quigg's revised Further Flood Studies Report and Sustainable Drainage Strategy (of February 2024) explain in detail the Council's objections to the development on flood risk grounds, notwithstanding that they override the Council's SFRA and the EA's Flood Map, which suggest most of the site is in FZ1. I agree with the Council's case on flood risk, for the detailed reasons set out in my appeal decision, which is the determinative factor that has led me to dismiss the appeal.
 2. I have, on balance, found against the Council in relation to the BMV issue for the reasons I give in my decision, but the Council was correct when it argued that the ALC Maps are not sufficiently accurate for use in the assessment of the quality of land on individual fields. I therefore find that its continued resistance on this ground was not unreasonable in itself.
 3. Not all the heads of the families occupying the four pitches gave evidence. Consequently, it was not unreasonable for the Council to say that it could not test whether all the occupiers of the site had genuine reasons for living there, notwithstanding that its evidence was clear that there was an unmet need for pitches in the Borough.
 4. It does appear that there was some needless delay in completing the general SoCG, which was not finally signed off by both parties until 9 September 2024, the penultimate day of the Inquiry. It would have been

useful for me to have had it completed earlier. There was much toing and froing between the parties in order to firm up this document, and much of the delay does appear to rest with the Council, which may have been unreasonable. But the main issues in dispute were clearly established at the Case Management Conference and the late submission of this SoCG did not, I submit, cause the appellant any significant wasted expense.

5. The Council was entitled to make the case that Mr Connors did not have a legitimate interest in the land. He is not a registered owner on the Land Registry title. The fact that I decided he was entitled to make the appeal does not make the Council's argument in this respect unreasonable.
 6. It would have been helpful if the Council had set out in the notice its (at least summary) reasons for issuing it, rather than just providing a list of relevant policies. But it did list all the relevant policies; for instance, MK Policies FR1-FR3 relating to flood risk and Policies NE2, NE3, NE5-7 relating to biodiversity, protected species and BMV. So, it cannot have come as any surprise to the appellant the issues that were raised in its Proofs, especially since these issues were discussed at the CMC.
 7. Whilst the Council's Closings say nothing about the appellant's reasons for leaving Toddbury Farm and relocating to the appeal site, Ms Bolton asked a number of questions in her cross-examination related to his reasons for doing so. The fact that she does not address these issues in her Closings does not indicate that the first adjournment was necessarily a waste of time – because it might not have been.
11. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Nick Fagan

INSPECTOR