



Costs Decision

Inquiry held on 22-23 October 2024 and 26, 27 and 29 November 2024

Site visit made on 21, 22 October and 25 November 2024

by R Barrett IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2025

Costs application in relation to Appeal Ref: APP/P2114/W/24/3346806 Land at and adjoining Fort Victoria Pier, Westhill Lane, Freshwater, Isle of Wight, PO41 0NA

- 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 application is made by Martha James on behalf of Save our Seashore for a partial award of costs against Miles Blamire.
 - The inquiry was in connection with an appeal against the refusal of the Isle of Wight Council to grant planning permission for development described as 'proposed Pier Restoration and Shellfish and Fish Landing and Processing Facility, Oyster Nursery, Flexible/ Mixed Use Open Space; Proposed Five Detached Dwellings and Associated Infrastructure and Amenities (readvertised application)'.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Save our Seashore

2. Save our Seashore was a Rule 6 (6) (R6) party to the Inquiry. Its costs application was made at the Inquiry in writing, with comments on the appellant's response submitted in writing in accordance with an agreed timetable after close of the Inquiry.
3. The R6's concern is that the late submission of additional technical reports¹ during the appeal process in relation to ecology matters required them to commission additional technical support at short notice. The evidence submitted goes beyond that of counter evidence. It introduces substantial new evidence that was not included in the appellant's statement of case. Its proposed submission was not confirmed in the case management conference (CMC). It was submitted contrary to advice in the Pins Procedural Guide and the RTPI Guide on Inquiries.
4. The appellant did not make the R6 party aware of the additional information that it had submitted. Therefore, the R6's ecology expert was only made aware of its submission at a very late stage, after exchange of proofs. That meant that expert input had to be commissioned at short notice.
5. For this reason, the R6 party incurred additional unexpected cost, particularly as it was necessary to assess the ecology evidence in two goes. Whilst the R6 did not submit an ecology rebuttal, its witness required briefing and additional and unexpected technical support.

¹ Appendices to the appellant's ecology proof including appendix A revised Preliminary Ecological Assessment 17 September 2024; appendix E mooring plan; appendix G decking details; appendix H seagrass translocation methodology.

6. In addition, the R6's planning consultant had to review all the additional ecology information² at appeal. That was unexpected and at additional cost to the R6 party.

The response by Miles Blamire

7. The response was made at the Inquiry in writing, summarised below.
8. The submission of additional ecology evidence was included in the appellant's proofs. Those were submitted in accordance with the Inquiry timetable. The appellant accepts that it did not make the R6's ecology expert aware of this new information, but it was provided by the Planning Inspectorate shortly after submission, being posted on the website.
9. Whilst there was evidently a delay in the R6's ecology expert being made aware of this new evidence and being provided with access to it, that is not due to unreasonable behaviour on behalf of the appellant. In fact, the appellant attempted to help the R6 access the required documents by providing a link.
10. The R6 does not explain how additional costs were incurred. There is no ecology rebuttal provided. The R6 aligned its case with that of the Council. No wasted cost is demonstrated.

Reasons

11. 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.
12. The appellant submitted a great deal of additional ecology evidence at appeal. That was submitted in accordance with the appeal timetable to address the Council's reasons for refusal. However, in submitting the large amount of technical information at a late stage i.e. proof stage, the appellant acted unreasonably.
13. Whilst the appellant did not make other parties aware of its intention to submit additional ecology evidence at the CMC, I have limited substantive evidence to indicate that surveys and studies were commissioned at that time. In this respect the appellant did not act unreasonably.
14. There was evidently a delay in the R6's ecology expert being made aware of this new evidence and being provided with access to it. However, it is the responsibility of all parties to an appeal to access and interrogate evidence provided by the Planning Inspectorate in a timely manner. In this respect the appellant did not act unreasonably and in fact sought to aid the R6 party in accessing the evidence.
15. The Council led on this matter at Inquiry. The R6 party did not provide an ecology rebuttal proof. However, I accept that the submission of the ecology evidence of concern to the R6 party late in the appeal timetable required some additional resource.

² Appendices to the appellant's ecology proof including appendix A revised Preliminary Ecological Assessment 17 September 2024; appendix E mooring plan; appendix G decking details; appendix H seagrass translocation methodology.

Conclusion

16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of dealing with the late submission of ecology evidence and a partial award of costs is therefore warranted.

Costs Order

17. 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 Miles Blamire shall pay to Save our Seashore the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of dealing with the appellant's ecology evidence submitted at proof stage; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Miles Blamire, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Barrett

INSPECTOR