



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 the Isle of Wight Council 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 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 a partial award of costs is allowed in the terms set out below.

The submissions for the Isle of Wight Council (the Council)

2. The costs application was submitted in writing at the Inquiry. The Council's further comments on the appellant's response were submitted in writing to an agreed time table after the Inquiry close. The Council's case is summarised below.
3. Whilst considering the appeal application the Council requested ecology information in order to fully assess development impacts. That was not provided at application stage. That matter was agreed in the oral evidence of the appellant's ecology witnesses.
4. The appeal application was made in April 2022. It was determined in December 2023. The Council had requested the relevant ecological information for a considerable period of time. It was not forthcoming. It was the responsibility of the appellant to ensure that the appeal application was accompanied by all supporting information. Its submission at appeal amounts to unreasonable behaviour.
5. The Council's mail of November 2023¹ confirmed that as the required ecological surveys are seasonally dependent they could not be provided in the short term. The relevance of 'local pressure' in defining when the Council determined the appeal application was not put to the Council's planning witness and should not be raised now.

¹ 21 /11/23 4.32pm

6. Regarding incurred costs, the Council's ecology evidence necessarily dealt with matters that were subsequently resolved, through the submission of the appellant's additional ecology evidence. The Council needed to deal with those matters in its statement of case, ecology proof and rebuttal. That caused the Council to incur wasted expense in dealing with that information at appeal.
7. The appellant also submitted a viability assessment in relation to an affordable housing contribution at appeal. This matter had not previously been raised. The submission of this new evidence required the Council to engage external consultants to review it. That led to agreement between the Council and appellant on this matter.
8. The Council was required to bear the costs of that review as part of its appeal preparation. Had viability been raised during consideration of the appeal application the Council would have been able to recover its costs. In this regard, the appellant's behaviour was unreasonable and resulted in unnecessary cost to the Council.
9. It was not unreasonable for the Council to determine the appeal application when it did, given the opportunity it afforded the appellant to submit requested supporting information. The appellant only raised the issue of viability after determination of the appeal application. In relation to the number of housing units, it is a matter for the appellant to determine its proposal for which planning permission is sought and submit the necessary supporting information.
10. The Council does not have relevant in-house viability expertise. External consultants are used and costs recouped from applicants in accordance with Council policy.
11. The appellant raises heritage matters, but that is irrelevant to this costs application.

The response by Miles Blamire

12. The response was made in writing at the Inquiry.
13. The Council determined the appeal application without proper and fair consideration of further time being allowed for the appellant to submit requested and further information.
14. In fact, the Council's November 2023² email confirms that the required ecological surveys are seasonally dependant and unable to be carried out during the winter, they would therefore not be available in the short term and there was considerable local pressure to conclude the appeal application. Ultimately it invites the appellant to withdraw and resubmit the appeal application. That denied the appellant the opportunity to present the necessary ecological evidence. The appellant therefore had no other option than to provide the requested information through the appeal process.
15. The Council raised some issues of concern after determination of the appeal application e.g. dolphins and porpoises.
16. In any event the Council has not demonstrated how the appellant's behaviour in this regard has led to unnecessary expense. The additional information

² 21 /11/23 4.32pm

- sought would have had to be assessed in any event, whether at application or appeal stage.
17. In its November 2023³ email, the Council referred to '...ecological and economic evidence...'. The Council's decision to determine the appeal application in the absence of this information was due to local pressure and not for sound planning reasons.
 18. In relation to viability matters, at application stage the appellant requested clarity on the number of housing units that would be acceptable in order to carry out the viability assessment. A Council response was not forthcoming. The appeal application was determined without that evidence, due to local pressure for a conclusion on the appeal application. That necessitated the viability evidence being submitted at appeal. That was a consequence of the Council's own actions, not those of the appellant.
 19. Prior approval from the appellant was not sought regarding recouping the Council's viability assessment costs. No justification is provided as to why the viability assessment could not be reviewed in-house. No discussion took place regarding the appointment of a joint viability expert. No suggestion of recouping the cost of the Council's review of the viability assessment was put to the appellant and it had no input into the need for or selection of the Council's chosen consultant.
 20. In these circumstances the appellant should not be liable for any of those costs.
 21. The suggested late ecology evidence is analogous to the introduction of a late heritage reason for refusal, which was not expressed as part of the Council's concerns prior to issuing its draft reasons for refusal. The appellant had to deal with this at appeal. That resulted in additional work for the appellant, including engaging external consultants. That demonstrates unreasonable behaviour on behalf of the Council. The appellant invites the Inspector to initiate an award of costs in this regard.

Reasons

22. 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.
23. In relation to ecology matters, the Council requested additional information soon after the appeal application was submitted. The appellant had ample time in which to provide this information at application stage. It did not provide it.
24. It provided the outstanding ecology information at appeal⁴. That was in the main submitted with the proofs⁵. Given the Council's previous requests at application stage, the extensive time window in which the requested information could have been submitted, and the volume of additional

³ 21 /11/23 4.32pm

⁴ Revised Preliminary Ecological Assessment 17 September 2024; full seagrass survey, translocation methodology and information in respect of signage and buoys; details of materials for the pier; bird surveys (submitted with appellant's statement of case); coastal pier restoration; information in relation to the oyster nursery; information regarding dolphins and porpoises.

⁵ The bird surveys were included in the appellant's statement of case c

- information involved, its submission at appeal represents unreasonable behaviour on behalf of the appellant.
25. The submission of the outstanding ecology information resulted in agreement on many ecology matters. I acknowledge that the Council would have had to consider all ecology evidence at some point whether at application or appeal stage. However, at appeal it needed to deal with matters that were subsequently agreed, through its statement of case, ecology proof and rebuttal. The Council therefore incurred unnecessary expense in the appeal process.
 26. The Council raised the matter of the potential presence of dolphins and porpoises at appeal. However, that was in response to the appellant's revised Preliminary Ecological Assessment submitted at appeal and reasonable in that context.
 27. In relation to viability, it was the appellant's responsibility to put forward a scheme for which planning permission was sought, confirming the number of housing units, plus all supporting information necessary to justify that scheme. That should include viability information in relation to any affordable housing contribution based on the scheme submitted as relevant.
 28. As the matter of viability was only raised after determination, it necessitated the Council to instruct a viability expert in its preparation for the appeal. If information had been provided previously, during consideration of the appeal application, that would not have been necessary.
 29. In the circumstances, the appellant's behaviour, in raising the matter of viability at appeal, which it had not raised at application stage, was unreasonable and that led to unnecessary expense to the Council in the appeal process.
 30. I am satisfied that engagement of external consultants on this matter was required as the Council do not have in-house expertise. In my experience that is often the case, although I have limited evidence of the relevant Council policy referred to. Whilst the matter of engaging viability consultants at appeal, the need, selection, costs and whether there is an opportunity for a joint appointment was not discussed and agreed with the appellant, that does not change my view on this matter.
 31. Given the length of time that the appeal application was under consideration the appellant was given sufficient time to submit the requested outstanding information, both in relation to viability and ecology matters. There is limited substantive evidence to suggest that the timing of the determination of the appeal application was due to local pressure. In any event that matter was not aired at Inquiry, so I attach limited weight to the evidence now referred to, such that it does not alter my findings in this regard.
 32. As this Decision deals with the Council's Costs application, I have no reason to consider the heritage matters raised by the appellant in this context.
 33. However, suffice to say, as that matter was a reason for refusal, evidence was submitted in accordance with the Inquiry timetable and consideration of any impacts on designated heritage assets would necessarily have had to be dealt with at appeal, I see no justification for an award of costs related to this matter.

Conclusion

34. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of dealing with the appellant's ecology evidence on which agreement was later reached and in assessing the appellant's viability evidence. A partial award of costs is therefore warranted.

Costs Order

35. 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 the Isle of Wight Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appellant's ecology evidence on which agreement was later reached and engaging external consultants to assess the appellant's viability evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.
36. 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