



Costs Decision

Inquiry held on 23, 24 and 30 April 2024; 1 May 2024; 25, 26 and 28 November 2024; and 19 to 21 March 2025

Site visits made on 30 April 2024 and 20 March 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2025

Costs application in relation to Appeal A Ref: APP/Y3940/C/22/3306233

Land at Euridge Manor Farm, Euridge, Colerne, Wiltshire, SN14 8BJ

- 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 Wiltshire Council for a partial award of costs against Mr John Robinson.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of land to a mixed use and the erection of a building.
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Appeal B Ref: APP/Y3940/W/23/3323464

Land at Euridge Manor, Euridge, Colerne, Wiltshire SN14 8BJ

- 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 Mr John Robinson for a partial award of costs against Wiltshire Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the use of land and buildings for events, retention of caravan as accommodation for event guests, formation of new access track for agricultural and events use, formation of new passing place, together with associated landscaping.
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Decision

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

The Submissions

2. The reasons given by the costs applicant (the Council) for the costs application are summarised as follows:
 - The late submission of evidence on ecology that meant the Council had to produce evidence that was unnecessary;
 - The late withdrawal of the appeal against the refusal of an agricultural workers dwelling that resulted in the Council incurring the wasted cost through the instruction of an agricultural advisor;
 - the appellant's late request for disclosure of noise data dated 1 May 2024 that was rejected by the Inspector but resulted in a lengthy adjournment and wasted costs; and
 - The withdrawal of the ground (c) appeal in relation to the allegation of the mixed use during the inquiry.

3. I have had regard to the appellant's response in reaching my decision.

Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (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.
5. Paragraphs 052 and 053 of the PPG provides examples of unreasonable behaviour on the part of the appellant. I have noted the criteria of these paragraphs referred to by the Council in making its application.
6. The Council says that, as the evidence necessary to reach an agreed position on the matter of ecology was submitted by the appellant late in the proceedings, it incurred unnecessary and wasted expense in the preparation of evidence on the matter of ecology.
7. As part of the planning application subject of Appeal B, the Council says that, in October 2022, it advised the appellant in writing that the ecology evidence was deficient in certain respects, and that further evidence was necessary. This is not disputed by the appellant. I can see that an additional request was made of the appellant in January 2023; this was for updated survey information for Barn Owl. The appellant responded to this in March 2023 which resolved some issues, including the Barn Owl matter. In May 2023 the Council say that further information regarding bats was requested 'again'.
8. Appeal B was made in June 2023, at which time the appellant would not have been in any doubt with regard to what evidence was needed on the matter of bats. Despite this, I can see that a bat survey was not undertaken until October 2023, which is some 12 months after the Council had set out its concerns regarding the evidence as it relates to bats. Furthermore, the survey report was not provided until January 2024 and the mitigation and enhancement strategy was not provided until March 2024. Despite having sight of the bat survey report a few weeks prior to the deadline for the submission of proofs of evidence, and the mitigation and enhancement strategy within days of this deadline, the Council were justified in taking a precautionary approach in preparing and submitting an ecology proof of evidence for the inquiry. Indeed, the Council did not have the comments of Natural England until after this deadline.
9. Whilst I understand that time is needed to undertake ecology surveys, I have been given no reason to justify the substantial delay in this case. I am not persuaded that there was a difference on judgement. Also, the appellant does not suggest that the requests made of him in the email exchanges between the parties, prior to the formal consultation response in January 2023, were in any way ambiguous as to what was required. Such discussions are common place in the process of a planning application, and should be regarded as directions, or at the very least a clear steer, as to the information necessary for the Council to consider a planning application favourably.
10. For the reasons given above, I can only conclude that the appellant behaved unreasonably in his delay in providing the necessary information on the matter of ecology. The costs incurred in the Council's preparation of its ecology evidence is, therefore, an unnecessary and wasted expense in the appeal process.

11. With regard to the matter of the agricultural workers dwelling, I understand that this was the subject of a planning application reference PL/2022/08391. I note that an appeal was made in respect of this application in March 2023. Although there may have been an intention to link this appeal to those before me, that did not transpire. The two appeals I considered in this case were initially linked to the subsequently withdrawn appeal, reference APP/Y3940/W/22/3310513, which related to planning application reference PL/2021/07966. Neither this application, nor the application subject of Appeal B included an agricultural workers dwelling. The matter of appeal reference APP/Y3940/W/22/3310513 and its subsequent withdrawal is not, therefore, a matter before me. As such, the PPG advises that costs that are unrelated to the appeal or other proceeding are ineligible. Accordingly, whether or not the withdrawal of the above-mentioned appeal is a demonstration of unreasonable behaviour is not for me to consider.
12. Notwithstanding this, a caravan in the yard area close to the Euridge Manor complex is the subject of the Appeal A enforcement notice, which was made in September 2022. The ground (a) appeal on Appeal A had been made in respect of the caravan, and the parties agreed at the case management conference held in January 2024 that a main consideration in this case was whether there was an essential need for accommodation on site for a rural worker. Shortly after this agreement, this element of the appellant's case was withdrawn in January 2024.
13. The appellant was right to review his case during the appeal process, as all parties should. However, the appellant does not sufficiently justify why the review of his case, resulting in the withdrawal of this element of his appeal, took some 16 months from when the appeal was first made. As such, I can only regard this as unreasonable behaviour on the part of the appellant.
14. As for the evidence of the unnecessary or wasted expense incurred as a result of this, I cannot agree with the appellant's suggestion that 'there was no work for Mr Coke to do before the appeal was withdrawn'. The Council say that in May 2023 it instructed the agricultural advisor and that, from this time to the withdrawal of this element of the ground (a) appeal on Appeal A, he was required to prepare his evidence. Whilst there is no suggestion that a full proof of evidence had been prepared by the advisor at the time of the withdrawal, resources would have been used to employ the services of the advisor, give him the necessary instructions, and for him to begin the preparation of his evidence. The cost of these resources is unnecessary and wasted expense in the appeal process.
15. Turning to the request for the Council's noise monitoring data, whilst the appellant may have been aware that the Council had collected the data, it was not clear until the Council's noise rebuttal proof, dated 8 April 2024, that the data was to be relied upon in the Council's evidence. That the appellant had not requested it before then is not, in my judgement, unreasonable. Similarly, the request for the data at the inquiry, just two weeks after it was apparent that it was to be relied upon by the Council, does not amount to a late request for it. The issues with regard to the reliability of the data and the extent to which it was to be relied upon by the Council only became apparent upon the request for it by reason of the application under section 250 of the Local Government Act 1972. Accordingly, I cannot regard the appellant as having acted unreasonably in making the request for the data at the inquiry.

16. On the final matter of the appellant's concession on his ground (c) case, whilst withdrawn late in the proceedings, I do not regard this element of the appellant's case to have been made without foundation. As I have already said, the parties are encouraged to review their case at all stages of an appeal. Having heard all evidence relevant to this, the appellant is right to reflect on his case. Having done so, I cannot regard his behaviour as unreasonable.
17. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated in respect of the delay in the submission of evidence on ecology, necessary for the determination of the appeals, and the late withdrawal of the element of the appellant's case on Appeal A that relates to the caravan and the need for accommodation on site for a rural worker. Accordingly, a partial award for costs is justified only with regard to these matters.
18. With regard to the remaining elements of the Council's costs application, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.

Costs Order

19. 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 Mr John Robinson shall pay to Wiltshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in:
 - i. the time spent by Wiltshire Council in preparing for the inquiry on the matter of ecology, including the preparation of its proof of evidence on this matter; and
 - ii. the resources used to employ the services of an agricultural advisor, give him the necessary instructions, and for him to begin the preparation of his evidence;

such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. The applicant is now invited to submit to Mr John Robinson, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR