



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 Mr John Robinson for a full award of costs against Wiltshire Council.
 - 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.
-

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 full 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.
-

Decision

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

The Submissions

2. Whilst an application for a full award of costs is sought, a partial award is sought in the alternative. The reasons given for the application are summarised as follows:
 - The Council's concession that the appeals could be entirely resolved by imposing conditions;
 - The Council's concession, that there is no evidential basis for a highways reason for refusal in this case, with the passing places proposed to be secured being beneficial but not a reason for refusal;
 - The Council's concession that noise impacts are capable of being resolved by way of condition;
 - The Council's failure to provide necessary information to the inquiry throughout, and the concomitant delay which resulted; and
 - The Council's late change of position in relation to the legal grounds and the Enforcement Notice.
3. I have had regard to the Council'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 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. I have noted the criteria of these paragraphs referred to by the costs applicant (the appellant) in his application.
6. In making his application, the appellant points in particular to certain concessions made by the Council's witnesses on the principle matters in dispute, including noise and highway safety. I note the evidence of the Council's witnesses on these matters and how their concessions were made during cross examination.
7. On the matter of noise, whilst the Council agreed that the development could be mitigated with conditions, this was more of an agreement in theory, rather than an agreement based on the evidence at the inquiry. In my judgement, the Council case gave robust reasons for the position it took and, as a result, my decision was finely balance. Indeed, the matters in dispute were particularly technical and, without doubt, required testing in the forum of the inquiry. Having heard this evidence, I have found in favour of the appellant and have concluded that the evidence demonstrates that the adverse effects can be mitigated and that the conditions I have imposed would not result in a further wholesale assessment of the impacts of the development. Nevertheless, I do not consider the Council to have behaved unreasonably in taking the position it has on both the principle of the development and its effect with regard to noise.
8. Turning to the noise evidence collected by the Council, there were two requests during the course of the inquiry for a summons of this evidence. With regard to the data subject of the first request, I can see that the appellant was aware of the noise monitoring undertaken by the Council well in advance of the start of the inquiry. The appellant's request for it was delayed. Nevertheless, the Council's resistance to provide it could be regarded as unreasonable, particularly as it was likely to be relevant to the inquiry. However, the request for it was refused. Whilst some time was spent at the inquiry on the request, on the whole, I cannot conclude that this has resulted in unnecessary or wasted expense.
9. As for the second request, the Council undertook the subject monitoring during the adjournment of the inquiry, in the summer months of 2024. The Council provided an updated proof of evidence that assessed the data collected and has, therefore, relied on this during the inquiry. I was given two addendum proofs of evidence from the Council that each refer to this. These are dated October and November 2024. I can see that the data relied on in the addendum proofs of evidence was requested by the appellant and some data was provided by the Council between the preparation of each version of the addendum. Whilst I acknowledge that this evidence has been provided late in the proceedings, I do not think the Council unreasonable to have collected this additional evidence between the inquiry sitting sessions, particularly as events continued to be held at the appeals site. Furthermore, I can see no delay in the Council providing some of the data collected prior to the commencement of the second sitting session.

10. Notwithstanding this, at the second sitting session of the inquiry the second request was made for the disclosure of more of the monitoring data collected. This was resisted by the Council.
11. I was told that the data collected during the summer of 2024 would be of more use to the inquiry than that collected previously, which is evident from the Council's reliance on it. I was also advised that it would be easier to review the data prior to its disclosure, unlike the data subject of the first request. In view of this, I do regard the Council's resistance to the disclosure of more of the evidence it had collected during that summer period to be a demonstration of unreasonable behaviour. Whilst it may have been the case that the extracts of monitoring relied on by the Council had already been given to the appellant on request, the Council's lack of cooperation with regard to the disclosure of more of this monitoring data demonstrates a lack of candour on the part of the Council. The resources of the appellant needed to assess the further evidence subsequently released, following my second ruling in the inquiry, results from the unreasonable behaviour of the Council. It must, therefore, be regarded as unnecessary and wasted expense in the appeal process.
12. On the matter of highway safety, my recollection of the evidence is not that the Council made such a clear concession, as suggested by the appellant. I found the Council's evidence to be robust in its suggestion that, despite the lack of any incidents of personal injury on the highway network, the proposed works to the local highway network were necessary to make the development acceptable. I did not find the Council's case, including that regard should be had to the geometry of the local highway network, contrary to the relevant Planning Practice Guidance and the National Planning Policy Framework. Whilst not sufficient to persuade me, the Council's evidence highlighted deficiencies in the local highway network that were important for me to consider in my determination of the appeals.
13. On the matter of the retrospective condition, I note that the position taken by the Council on this matter changed during the course of the appeals. However, it is right that a party should reflect on its case at all stages of the appeal. The Council has demonstrated that it has done this, although I acknowledge that this was only after the commencement of the inquiry. Nevertheless, even if the Council had changed its position on this matter prior to the commencement of the inquiry and the preparation of evidence, it would not have negated the need for me to have both written and oral evidence on the matter of highway safety. I say this, having regard to the lack of agreement between the parties on the need for the off-site highway works.
14. In view of the above, I cannot agree with the appellant, that the Council failed to produce evidence to substantiate its position in this case; that its evidence about the effect of the development on highway safety was vague, generalised or inaccurate; or that its change in position with regard to a retrospective condition demonstrates unreasonable behaviour that has resulted in unnecessary or wasted expense.
15. With regard to the Council's case as it relates to the iglu pod, I cannot regard the Council's case on this to be so hopeless as to render its defence of it to be unreasonable. Whilst the Council could have more carefully analysed the legislation and caselaw as it relates to caravans and what is a building, it did raise matters that cast some doubt on the appellant's case. Indeed, some judgement

was required in my determination of this element of the appeal. On the whole, I cannot regard the Council's case with regard to the iglu pod to be an example of unreasonable behaviour.

16. As for the Council's approach to the material change of use, whilst I found the notice to be defective in this regard, it was not so hopeless as to render it a nullity. Indeed, it was necessary for me to hear **all** evidence on the matter of the allegation of a material change of use, including that of the Council, before I was able to conclude on ground (b) and on how the notice could be corrected. I acknowledge that the evidence given to the inquiry by the Council's enforcement witness was, in some respects, misguided. Nevertheless, without it there was still some substance to the Council's case against the legal grounds of appeal.
17. I also note that a planning contravention notice was issued prior to the issue of the enforcement notice, subject of Appeal A. The Council clearly took steps to correctly identify the breach of planning control that had occurred, and the allegation as put in the notice reflects the response given by the appellant in the completed planning contravention notice.
18. All of this considered, I cannot regard the Council's defence of the legal grounds of appeal as they relate to the allegation of a material change of use to be a demonstration of unreasonable behaviour.
19. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeals process has been demonstrated in respect of the lack of cooperation on the part of the Council in the disclosure of noise monitoring data. Accordingly, a partial award for costs is justified only with regard to this matter.
20. With regard to the remaining elements of the appellant's costs application, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.

Costs Order

21. 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 Wiltshire Council shall pay to Mr John Robinson, the costs of the appeals proceedings described in the heading of this decision limited to those costs incurred in the time spent by the costs applicant in assessing and dealing at the inquiry with the noise data released by Wiltshire Council to the costs applicant, following the Ruling given at the inquiry on 28 November 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Wiltshire Council, to whom 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