The Planning Inspectorate

Costs Decision

Inquiry held on 25 – 26 February 2025

Site visit made on 27 February 2025

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2025

Costs application in relation to Appeal Ref: APP/U2235/W/20/3259300
Monk Lakes, Staplehurst Road, Maidstone, Kent TN12 9BS

- 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 David Padden and the Hertsfield Residents Association for a partial award of costs against.
- The inquiry was in connection with an appeal against the refusal of planning permission for the retention of lakes known as Bridges and Puma, the retention and completion of part completed raised reservoirs Lakes 1, 2 and 3 (all for angling purposes) along with a clubhouse and detailed landscaping scheme.

Decision

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

Background

2. For a considerable period before the inquiry Mr David Padden and the Hertsfield Residents Association (the R6 party) and Monk Lakes Limited (the appellant) engaged in correspondence regarding the matter of Exceptional Circumstances in relation to retrospective EIA development. This resulted in the appellant submitting a proof before on the inquiry on this topic, and a legal submission being made (with prior warning) by the R6 party just before the inquiry.

3. The appellant was not legally represented at the inquiry. I gave the appellant every opportunity to respond to these submissions at the inquiry, but they indicated that they did not wish to do so and stated that they relied on the proof.

4. After the inquiry closed the appellant submitted a further document dealing with the Exceptional Circumstances matter. At the time I declined to accept this document as the inquiry had closed and no indication had been given of the preparation of such a document. I stated that I was satisfied that, with the appellant's proof and the R6 submissions and I had all the material I needed to address this matter.

5. However, following further consideration, I changed my position, accepted a response from appellant's Counsel and gave the other parties opportunity for comment on this response.

6. The R6 party claim for costs relates to the cost of preparing their response to the appellant's late legal submissions on Exceptional Circumstances.

The submissions for Mr David Padden and the Hertsfield Residents Association

7. Claims for costs must be normally made before an inquiry is closed unless there is good reason. In this case the unreasonable behaviour, namely the response to the R6 submissions, did not occur until after the inquiry had closed.

8. The fact that the appellant was given permission to comment on Exceptional Circumstances does not mean that the appellant's behaviour in creating that situation was reasonable.

9. The Exceptional Circumstances issue has been well known for over a decade. It was also set out in the R6 Statement of Case, at the Case Management Conference and in a R6 proof.

10. The appellant provided their legal submissions on this matter before the inquiry – which it was not obliged to do.

11. The fact that the appellant was not legally represented at the inquiry was their choice. The fact that Counsel's advice was subsequently provided in responding to this matter casts doubt on the reason given for the appellant not being legally represented at the inquiry.

12. The appellant was given ample opportunity at the inquiry to respond to the R6 submissions. Having received the appellant's response after the inquiry, costs were incurred in instructing Counsel and others. These costs would not have been incurred if the appellant had responded to the matter at the inquiry.

The response by Monk Lakes Limited

13. After the inquiry closed the appellant sought to submit a written response to the R6 submissions. This was initially not accepted by the Inspector. Subsequently the Inspector allowed a submission from the appellant. This response was provided in direct response to the Inspector's invitation and cannot be considered unreasonable.

14. There was no obligation on the R6 party to respond to the appellant's submissions, but it chose to do so – and to seek costs on that basis is itself unreasonable.

15. The R6 party has acted unreasonably throughout the planning process and exhibited obstructive behaviour. However, although it could do so, the appellant is not seeking costs on that basis. The fact that the appellant was not legally represented at the inquiry was for reasons clearly set out and to suggest otherwise is inappropriate.

Reasons

16. The Planning Practice Guidance 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.

17. As noted above, the matter of Exceptional Circumstances has been at large for a considerable period, and was inevitably a matter which would be considered as part of the appeal process. The R6 party was under no obligation to submit its legal submissions prior to the inquiry, although it was helpful that it did so. This gave the appellant ample opportunity to respond during the course of the inquiry – as was made clear on several occasions.

18. One of the appellant's representatives at the inquiry, in response to a question from me, stated that the appellant did not wish to respond and relied on the document dealing with the matter which had been submitted before the inquiry. On that basis I closed the inquiry and there was no indication that the appellant felt themselves in any way disadvantaged or that they wished to respond further.

19. After the inquiry the appellant indicated that they wished to make a written response to the R6 legal submission on Exceptional Circumstances. Initially I stated that I was not prepared to accept this, as ample opportunity had been given at the inquiry and there had been no suggestion that this request would be forthcoming.

20. However on further reflection I was aware that the matter would, of necessity, form part of my consideration of the appeal, and that it had the potential to be an important element. I considered it necessary that the parties had ample opportunity to make their views known. I therefore changed my position and indicated that I was prepared to accept a response from the appellant on this matter. The R6 party was under no obligation to respond to the appellant's submissions, though they were offered the final opportunity to comment.

21. Given that I invited the appellant to make written submissions on this matter, for the reasons set out above, I do not consider that they acted unreasonably in doing so.

22. There are two matters raised by the R6 party in their claim which I need to deal with briefly.

23. Firstly, the fact that the appellant was legally unrepresented at the inquiry but retained Counsel subsequently. It is for all parties to decide how to be represented at an inquiry, and indeed subsequently – provided that ample opportunity to participate was afforded to them. I have read statements from both the appellant and the R6 party on this topic, but it is not a matter for me.

24. Secondly the statements by the appellant that the R6 party themselves behaved unreasonably throughout the process. However, this not been the subject of a costs claim and is therefore not before me.

Conclusion

25. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Phillip J G Ware

INSPECTOR