



Costs Decision

Inquiry held on 31 October to 2 November 2023, 3, 4, 17 and 30 January 2024.
Inquiry closed in writing on 13 February 2024.

Accompanied site visit made on 3 November 2023. Unaccompanied site visits made on 30 October 2023 and 2 January 2024

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st May 2024

Costs application in relation to Appeal Ref: APP/T3725/W/23/3319752 Land at Warwickshire Police Headquarters, Woodcote Lane, Leek Wootton, Warwick, Warwickshire CV35 7QA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Leek Wootton & Guys Cliffe Parish Council & Leek Wootton Focus Group for a partial award of costs against Warwick District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for up to 83no. dwellings (including affordable housing), access, internal roads and footpaths, public open space, landscaping, drainage and other associated works and infrastructure (all matters of detail reserved except for the vehicular access to the site).
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Decision

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

Preliminary Matter

2. The costs applications were dealt with through written representations by all parties. The applicant's submissions requested a partial award of costs for the reasons set out below.

Reasons

3. 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.
4. In summary, the applicant considers the Council have been unreasonable in relation to the late submission of updated 5-year housing land supply data. This came to light on the opening day of the Inquiry. Prior to this, the main parties were agreed there was a 5-year supply of deliverable housing land. Following the updating of the supply data, the appellant no longer considered this would be the case. This resulted in an adjournment to allow the parties to consider their positions and to produce new proofs of evidence. It also resulted in the need for additional cross-examination and a housing supply roundtable session. The need to consider this evidence before other aspects could be addressed also resulted in the abandonment of a programmed sitting day.

5. I consider that it was plainly unreasonable of the Council to not inform the parties that they would be publishing revised data before the start of the Inquiry or, more importantly, that it had been published. It has not been satisfactorily explained why the Council entered into the Housing Statement of Common Ground with the appellant knowing its supply position had changed and that the data referred to was out-of-date. Nor has it been explained why, if the data was published on 18 October, the parties were not informed until the morning of the Inquiry. Even if the Council were content the 5-year supply position had improved, it was still important that the other parties had the opportunity to consider the data and come to their own conclusions. That this consideration could only be made once the Inquiry had begun was both unfortunate and avoidable. It was clearly unreasonable for the Council not to make the other parties aware of new evidence.
6. It is not for the Council to assume that the other parties will be keeping a vigilant eye on their website to make sure nothing important is published in advance of the Inquiry opening. To suggest that the Rule 6 party, or appellant, were somehow at fault for not anticipating the change in supply position is not appropriate. Moreover, it is not appropriate to seek to apportion any blame for the subsequent adjournment on the Rule 6 party's response to my questions. The Rule 6 party was neutral on the matter but still correctly concluded, in my view, that to not adjourn would have raised risks in terms of procedural fairness. In any event, the decision to adjourn was mine and mine alone.
7. I must consider whether the Rule 6 party incurred any unnecessary or wasted expense because of the Council's unreasonable behaviour. The Council contend that because of the timings involved, an adjournment would have been necessary in any event. Proofs of evidence were due on the 6 October. The revised supply data was published on 18 October. Therefore, it is correct to say that the proofs of evidence would not have been able to consider this issue and additional time may have been needed to address the points made. Even if the parties had been aware that the data was forthcoming, it would not have been possible to know what it meant for their positions until after this date. Therefore, the need for additional proofs and sitting time may have been inevitable. The issue of wasted expense is not, however, only in terms of the production of evidence. It also could come from the avoidable consequences of any abortive work carried out between 18 October and the Inquiry opening and the subsequent disruption to the programme.
8. Having fair warning of when the data was likely to be published, or being informed at least when it was published, would have given the parties time to consider the information and make representations about the effect on the Inquiry programme before it opened. Even if this had required a change to the programme, or giving more time for evidence to be prepared, it may still have meant some abortive work could have been avoided. It would also have provided an opportunity to manage things such that the programmed sitting day on first week was not wasted. This may also have meant that the evidence of Mr Sadler, for example, could have been dealt with in one sitting, rather than having to come back to pick up on five-year supply and other planning issues that could not be addressed earlier. Moreover, it may have meant the subsequent difficulties in finding available days to complete the Inquiry and piecemeal approach would have been avoided.

9. Therefore, even if there had been some inevitable effect on the Inquiry programme and the need for more evidence, the Council's timing and consequent avoidable disruption is likely to have resulted in some wasted or unnecessary expense for the applicant.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's and a partial award of costs is therefore warranted.

Costs Order

11. 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 Warwick District Council shall pay to Leek Wootton & Guys Cliffe Parish Council & Leek Wootton Focus Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred associated with the implications of the revised five-year housing land supply data; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Warwick District 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.

S J Lee

INSPECTOR