Planning Inspectorate

Costs Decision

Hearing held on 25 & 26 March 2025 and (online) 19 May 2025

Site visits made on 25 & 26 March 2025

by H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2025

Costs application in relation to Appeal Ref: APP/Z3825/W/24/3350094
Land to the West of Storrington Road, Thakeham

- 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 Horsham District Council for a partial award of costs against Bellway Homes Ltd (Strategic Land).
- The appeal was against the refusal of planning permission for demolition of existing buildings and the phased redevelopment of the site as a residential led development comprising 247 dwellings and flexible non-residential floorspace (Use Class E), with works to public right of way and associated landscaping, open space and infrastructure.

Decision

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

The submissions for the Council

2. The costs application was made in writing prior to the close of the hearing.

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. The costs application made by the applicant focusses on unreasonable behaviour of a procedural, rather than substantive, nature. The PPG[1] sets out examples of procedural unreasonableness and includes where there are delays in providing information or other failure to adhere to deadlines; where fresh and substantial evidence is introduced at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and, prolonging the proceedings by introducing a new ground of appeal or issue.

5. The Council allege that each of the examples of procedural unreasonable behaviour has been demonstrated in this case which are explored below.

1. In paragraph: 052 Reference ID: 16-052-20140306

Failure to adhere to deadlines and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen

6. The appeal was validated on 14 November 2024 with the appellant's Statement of Case (SoC) and relevant appendices having been received and the appeal timetable started on the 8 January 2025, after the publication of the December 2024 National Planning Policy Framework (the Framework). A request was received on 6th February 2025 from the appellant seeking to provide an addendum to the SoC to cover the revised Framework of December 2024, the publication of the Housing Delivery Test (HDT) results for 2023 and the cancellation of the Horsham District emerging Local Plan examination hearings.

7. By reply the next day, my response to the appellant's request was that a short addendum to the SoC addressing the Framework, HDT and examination changes and any new interested party points arising would be accepted within 10 days following receipt of the Council's Statement of Case. I also specifically clarified that the Addendum Statement of Case (Addendum SoC) was not to be used to repeat points made in the original SoC or further the case for the appellant through the submission of new points or evidence.

8. The appellant's Addendum SoC, received on 27 February 2025, ultimately extended to 282 pages with three appendices. Appendix two of the Addendum SoC comprises three separate appeal decisions, all of which predate the submission of the appeal by some way and go to the point about the sustainability of bus services which is raised in the Council's officer report of July 2024. The Addendum SoC also signposts to further information that would be submitted at a yet later date, in the form of the *Flood Risk Sequential Test Report* (Sequential Test Report).

9. Save for the content I specifically invited, there is no reason why much of the additional evidence presented was not a part of the appellant's original appeal submission in response to the Council's refusal and officer report. The actual content of the Addendum SoC which specifically addresses the HDT, Framework, examination changes and newly arising interested party points extends to a nominal number of pages in comparison to those taken up by new, expanded or repeated points and appendices in support of the case.

10. The appellant's defence in response to the Council's concern about this mismatch refers to the ability to submit proofs of evidence and rebuttal statements under the Inquiry Procedures[2] and to enable them to have the final say. However, the appeal case, as the appellant was clearly aware, was being run as a hearing[3], rather than an inquiry, allowing for structured discussion on the remaining points of disagreement at the event itself. In any event, the submission of rebuttal statements as part of the inquiry process is at the request or discretion of the Inspector, rather than an expected and regimentally timetabled part of the process. The appellant's communication[4] also appears to accept that the Addendum SoC is a detailed response to the Council's case and goes beyond what I indicated would be acceptable given that the hearing was the opportunity to test the evidence that had been submitted in accordance with the timetable.

[2] The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000
[3] Under The Town and Country Planning (Hearings Procedure) (England) Rules 2000
[4] Of 10 March 2025

11. In respect of the Sequential Test Report signposted in the Addendum SoC, it did not materialise until Friday 21 March 2025 at 16:36 and ultimately reached me later on Monday 24 March, which did not allow any time to review it before the opening of the hearing the next day. Whilst I have been invited to consider it as a means to avoid making a legal error in consideration of the proposal, the need for it to be considered by potentially interested parties during an adjournment was downplayed at the hearing. By not doing so, any decision to grant permission having taken it into account could have been legally unsound for a different reason.

12. On the day of the hearing itself, two further documents[5], i.e. the Rapleys letter and Aspect Ecology Technical Note, were also submitted to advance support points made in connection with the protection of badger setts and the likelihood of a unit within the local centre being taken up by a convenience store operator.

13. Due to the breadth, extent and depth of the additional information in the Addendum SoC, taken together with the belatedly submitted Sequential Test Report and the two further documents submitted by the appellant, there was a clear need for an adjournment to allow other parties an opportunity to consider the implications of such. The hearing took place largely without discussion on the new material and was adjourned to allow consultation to be undertaken.

Prolonging the proceedings by introducing a new ground of appeal or issue

14. The original Flood Risk Assessment submitted by the appellant outlines that the site has some areas at risk of flooding from pluvial flood sources as per the Environment Agency's (EA) online flood mapping system.

15. The Council's assessment of the appeal proposal, including the Flood Risk Assessment, did not lead to a refusal based on the absence of a sequential test report or for any flood risk related reasons.

16. The appellant, in its request to submit an Addendum SoC, did not specifically highlight that it, rather than the Council, would be introducing an entirely new main issue as an unavoidable outcome of the alleged material changes. The Addendum SoC submitted in late February then signposts to flood risk issues to be the subject of additional evidence in the form of a sequential test then being prepared. However, paragraph 5.38 of the agreed Statement of Common Ground (SoCG), submitted in March, contradictorily outlines that the scheme is acceptable in terms of flood risk and that subject to conditions, the scheme accords with policies in relation to flood risk.

17. The reasons for submitting the Sequential Test Report are explained as relating to the December 2024 publication of the Framework and changes to the EA online flood mapping system[6] which are suggested to have intensified the pluvial flood risks. The Addendum SoC refers to paragraph 175 of the Framework being entirely new. It is not, as a similar form of wording can be found in the Framework of 2023 (paragraph 168). The built development on the site always overlapped with the acknowledged nominal ribbons of pluvial flooding which existed prior to any changes to the EA flood risk mapping. The submitted Sequential Test Report alternatively explains that the necessity for undertaking such related to the findings of some recent appeal decisions, though they have not been fully referenced or

[5] Hearing documents 2 and 3 – see related appeal decision
[6] Changes made 17 December 2024/January 2025

provided. The costs response alternatively suggests that it was necessitated through legal advice received in respect of this subject matter.

18. For whichever specific reason the appellant took the approach that it did, it added to the unforeseen costs of assessing an appeal already at an advanced stage. In my view, the appellant could have made clearer its intentions, the potential effects on the hearing timetable, event preparation and duration, and could have produced the evidence more efficiently than it did.

Conclusions

19. In view of the above, the appellant's late submissions and the materiality of such necessitated further work by the Council which could not have taken place without an adjournment of the hearing. Therefore, I consider that the appellant has acted unreasonably in relation to their procedural handling of the appeal case and has necessitated the Council incurring further costs associated with the additional work outlined below:
    - The costs (officer, press and mail) associated with re-consulting the 627 interested parties on the new submissions,
    - The costs (officer, press and mail) associated with re-consulting separately in relation to the arrangements for the resumption of the hearing;
    - The officer costs associated with assessing the Sequential Test Report, consulting the Environment Agency, and providing a written submission on the Council's findings; and
    - The officer costs associated with reviewing and responding to the Rapleys letter and Aspect Ecology Technical Note, including the costs of the Council's external Ecology Consultants reviewing the Technical Note and providing their written advice.

20. For the reasons given above, unreasonable behaviour resulting in unnecessary expense has occurred in respect of the above and a partial award of costs is therefore warranted.

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 Bellway Homes Ltd (Strategic Land) shall pay to Horsham District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the manner described in paragraph 19; such costs to be assessed in the Senior Courts Costs Office if not agreed.

22. The applicant is now invited to submit to Bellway Homes Ltd (Strategic Land), to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

H Nicholls

INSPECTOR