



Costs Decision

Inquiry held on 6,7 and 18 May 2010

Site visit made on 18 May 2010

by **K Nield BSc(Econ) DipTP CDipAF MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10 June 2010

Costs application in relation to Appeal Ref: APP/H2835/A/09/2119346 Wellingborough School, Irthlingborough Road, Wellingborough, Northamptonshire, NN8 2BX

- 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 Wellingborough School for a partial award of costs against Borough Council of Wellingborough.
- The inquiry was in connection with an appeal against the refusal of planning permission for the construction of a new vehicular access off London Road, including alterations to the existing highway, alterations to the layout and resurfacing of the existing car park and provision of replacement tennis courts (3 no).

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Appellant

1. The application is solely in respect of costs incurred by the appellant in connection with the consideration of the effect of the appeal scheme on highway safety in the vicinity of the proposed access during the period between the appeal being lodged with PINS¹ (21 December 2009) and up to the date the Council withdrew the first element of Reason 2 of its Reasons for Refusal (RfR) of the application (23 March 2010).
2. The costs application makes reference to paragraph A3 of Circular 03/2009 (the Circular) which indicates, amongst other matters, that the costs regime aims to ensure that all those involved in the appeal process behave in an acceptable way and follow good practice. Reference is also made to paragraph A12 which sets out conditions governing an award of costs. Specific reference is made to paragraphs B3 and B4 of the Circular in respect of procedural matters and to paragraph B23 in respect of substantive issues in respect of the appeal.
3. The appellant contends that the Council acted unreasonably through the late withdrawal of the first element of Reason 2 of its RfR as a result of which the appellant had incurred unnecessary expense. The costs application was timely and the appellant had given advance notice to the Council and to PINS of the intention to apply for partial costs in respect of this matter.
4. A written costs application was provided by the appellant at the Inquiry and it is not necessary for me to reproduce the appellant's submissions in detail.

¹ The Planning Inspectorate (PINS)

The Response by the Council

5. The Council confirmed that the dates indicated by the appellant were not disputed.
6. The Council stated that its behaviour was not unreasonable. It was not bound by the views expressed by its officers or by statutory consultees. It considers that it was self-evident and common sense that there was a highway safety issue to be considered as the appeal scheme cuts across The Walks which is used by pedestrians and cyclists and the proposed access would serve a 900 pupil school.
7. The Planning Committee formed a view in respect of highway safety that differed from the officer's advice. Such an action was both respectable and justified. The appeal scheme is, in relative terms to other matters before it, a relatively small application. Consequently, it is unreasonable and disproportionate to expect the Council to instruct expert consultants in advance of the issue of the Decision Notice on an application. The normal procedure in respect of the refusal of an application was followed in this case with the instruction of an appropriate consultant to deal with the disputed matter following the lodging of an appeal.
8. A case conference (with Counsel) was held on the 22 March 2010 which the Council's highway consultant attended. That was the first opportunity to meet as a team. At that conference the consultant advised that health and highway safety concerns in respect of the scheme could be satisfied by the imposition of relevant planning condition(s). The Council withdrew its highway objections the following day. The Council could not have been expected to withdraw its objection prior to the case conference. The withdrawal was some 3 weeks before the date the exchange of proofs of evidence was due and some 7 weeks before the start of the Inquiry.
9. In addition to the above, the Council considers that there was no unnecessary expense incurred by the appellant. The appellant had to meet the standards set out in the Highway and Traffic Supporting Statement submitted with the planning application. Consequently, very little additional work on that aspect was required following the determination of the application.
10. The Council expressed concern that bearing in mind the limited work that would have taken place by the appellant's team in respect of this matter between the specified dates the actual amount of an award would be minimal and that to make applications for low level amounts gave rise to a disproportionate use of Inquiry time to entertain them.

Conclusions

11. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
12. The appeal application had been made against the background of negotiations between the appellant with the Local Highway Authority (Northamptonshire County Council (NCC)) over a number of years to provide an acceptable access

arrangement to the school which would reduce the highways safety implications of the present arrangements which had been criticised in the past by the Independent Schools Inspectorate. The application was supported by a detailed Highway and Traffic Supporting Statement prepared by the appellant's highway consultant.

13. The consultation response from NCC did not raise objections to the scheme (subject to planning conditions and an Obligation under section 106 of the Act (s106)). This was reported by the Head of Built Environment in his report to the Planning Committee which recommended approval for the proposed development. A site meeting of members of the Planning Committee took place which was attended by the relevant highways officer of NCC at which he gave his view that the scheme represented the only solution acceptable to the Highway Authority². The firm position taken by NCC as the Local Highway Authority significantly reduces the weight I attach to the Council's view that it was self-evident that there was a highway safety issue in connection with the scheme. The Council's subsequent action in withdrawing that element of the RFR prior to the Inquiry is also significant.
14. In refusing the appeal scheme partly on highway safety grounds the Planning Committee took that decision against the advice of its Head of Built Environment and the Local Highway Authority. Paragraph B20 of the Circular notes that whilst Local Planning Authorities are not bound to accept the recommendations of their officers, where technical advice is not followed they will need to show reasonable planning grounds for taking a contrary position and produce relevant evidence on appeal to support the decision in all respects.
15. At the time the decision to refuse the application was taken it is clear that the Council had no substantive technical highway evidence before it to support its contrary view to the technical information submitted by the appellant and the advice of the relevant officers of the Council and NCC.
16. In my view, it would have been clear to the Council that following the lodging of an appeal against the Council's refusal of the application that it would need expert advice and evidence to support its decision. However there was an interval of approximately 3 months before a case conference was held and the Council's team came together and at which it was decided that the concerns of the Council could be satisfied through the imposition of planning conditions and a s106 Obligation.
17. I accept that the Council acted quickly following the case conference to withdraw that element of the RfR, nevertheless, during the 3 month period leading up to the case conference no indication appears to have been given by the Council to the appellant that this element of the RfR was likely to be withdrawn.
18. During that time interval I consider it most likely, from the submissions of the appellant, that its team was reviewing the RfR through various meetings, correspondence and discussions with the Council and others and undertaking initial preparatory work for the Rule 6 statement and Inquiry evidence.

² As noted in the Report of the Site Meeting

19. I accept, in part, the Council's contention that the amount of work at that stage may not have been large but that does not substantially weaken the appellant's claim as there is little doubt that work did take place that could have been avoided or at least significantly reduced if the Council had acted more quickly to consider the matter and advised the appellant accordingly.
20. Based on the above factors I accept that abortive work undertaken by the appellant's team took place between the date the appeal was lodged (21 December 2009) and the date the Council withdrew its objection to the first element of Reason 2 (23 March 2010).
21. I conclude that the Council's conduct through the withdrawal of the first element of Reason 2 of the Council's RfR led to unnecessary expense being incurred by the appellant. I therefore consider that a partial award of costs is justified.

Formal Decision and Costs Order

22. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that the Borough Council of Wellingborough shall pay to Wellingborough School the costs of the appeal proceedings limited to those costs incurred by the appellant between 21 December 2009 and 23 March 2010 solely in respect of the first element of Reason 2 of its Reasons for Refusal (the effect of the scheme on highway safety) of application Ref WP/2009/0176/F, dated 21 May 2009, such costs to be assessed in the Supreme Court Costs Office if not agreed.
23. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of planning permission for the construction of a new vehicular access off London Road, including alterations to the existing highway, alterations to the layout and resurfacing of the existing car park and provision of replacement tennis courts (3 no) at Wellingborough School, Irthlingborough Road, Wellingborough, Northamptonshire, NN8 2BX.
24. The applicant is now invited to submit to the Borough Council of Wellingborough, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Kevin Nield

INSPECTOR