
Costs Decision

Inquiry held on 3 September 2013

Site visit made on 4 October 2013

by Brian Cook BA(Hons) DipTP MRTPI

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

Decision date: 25 November 2013

Costs application in relation to Appeal Ref: APP/F0114/A/13/2195706 Stowey Quarry, Stowey Road, Stowey, Bishop Sutton, Somerset

- 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 Stowey Sutton Action Group for a partial award of costs against Mr Larry Edmunds.
 - The inquiry was in connection with an appeal against the refusal of planning permission for restoration of Stowey Quarry by landfilling of Stable Non Reactive Hazardous Waste (SNRHW) and inert wastes.
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Decision

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

The submissions for Stowey Sutton Action Group (SSAG)

2. Mr Stookes acknowledged the advice in paragraph D5 of Circular 3/2009 that awards to or against third parties will be made only in exceptional circumstances. However, in this case the exceptional nature of the amendment to the appeal proposal and the timing of it caused wasted expense for SSAG in two respects. First there was additional legal cost in preparing for the amended scheme having prepared initially for the appealed scheme. Second, there were the legal and expert witness costs for preparing to examine Mr Harper's evidence which, in the event, was not called. If proper notice of this had been given this cost would not have been incurred.
3. A partial award is therefore sought.

The response on behalf of Mr Edmunds

4. Mr Stookes is quite correct to refer to paragraph D5 of the Circular. This also says that costs will not be awarded to third parties where unreasonable behaviour by one of the principal parties relates to the substance of the case. The amendment to the appeal scheme complained of is on the substance of the case.
5. In any event, SSAG has a root and branch objection to the scheme and many of those objections such as noise, dust, lighting, etc are unaffected by the amendment to the scheme. The evidence on this did not change and no expense can have been incurred. This is also the case with respect to hydrology where the evidence remained the same also.

6. Mr Harper's evidence remained before the Inquiry and was rebutted in the SSAG written evidence in any event. It is not clear what additional expense was incurred.

Reasons

7. 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 another party to incur or waste expense unnecessarily.
8. Paragraph B43 of the Circular is very clear about the way appellants should proceed where, as in this case, the nature of the scheme is changed in response to the reasons for refusal. The appellant did not follow this course of action. Instead an amendment to the application considered by the Council was put forward on the first morning of the Inquiry. While notice of this was given in a letter dated 6 August from the appellant to the Planning Inspectorate, I did not interpret this letter as a formal request to amend the application before the Inquiry as was made clear in my note to the parties of 23 August sent via the Planning Inspectorate.
9. By seeking this change the appellant was accepting that the appeal plainly had no reasonable prospect of success on the basis of the application submitted to the Council. This is given in paragraph B13 of the Circular as an example of unreasonable behaviour by appellants likely to lead to a substantive award of costs.
10. I have considered whether the appellant's action was tantamount to the withdrawal of the submitted appeal and the substitution of another. I conclude that it was not. Had that been the case I would not have allowed the change to have been made. I did for the reasons set out in the Appendix to my decision. The circumstances set out in paragraph B46 of the Circular do not therefore apply here. I must therefore conclude that the undoubted additional expense incurred by Mr Stookes in preparation time and by Dr Boreland in the preparation of her Addendum proof do relate to the substance of the case as Mr Fraser argued. Following the guidance in paragraph D5 of the Circular therefore no award can be made in respect of the first matter set out by Mr Stookes in his application.
11. Turning now to the second matter, I do not consider that this relates to the substance of the case. An award is therefore possible if the conditions set out in paragraph A12 of the Circular have been met. Clearly the application for an award of costs was made at the proper time.
12. Mr Harper's proof related to the Council's reasons for refusal and the holding objection of the Environment Agency (EA). In my letter dated 14 August (again sent via the Planning Inspectorate) I set out my understanding of Mr Harper's proof but raised the possibility that I may have misunderstood his position. In an email dated 22 August (so after the appellant purported to have sought to amend the basis of the proposal before the Inquiry) Mr Harper corrected my impression. I shall not set out in full what he said as the parties have that. However, his view is very clear. He states his opinion that the site '...is potentially capable of being engineered to accept a lesser specification SNRHW, not that applied for.'

13. If that was his professional view it was appropriate for him to state it. However, the appellant did not accept that advice and instead withdrew all SNRHW from the application in order to overcome the EA objection. In those circumstances it is not clear what continuing relevance Mr Harper's evidence has. However, as Mr Fraser confirmed in his response to this application, that evidence was never withdrawn; Mr Harper simply did not appear for unspecified personal reasons to present it and be asked questions about it. The alternative witnesses offered would not have spoken to his proof but would have given evidence of a different nature. Notice that this would be the case was only given by email at 17.33 on the day before Mr Harper would have been called.
14. It is clear to me that Mr Stookes therefore incurred wasted expense in preparing to cross examine Mr Harper's evidence with which SSAG clearly did not agree. This wasted expense would have included the instruction Mr Stookes would have taken from the SSAG expert witnesses.
15. While I am clear that this represents unreasonable behaviour on the part of the appellant paragraphs B13 to B29 of the Circular are heavily weighted towards examples of unreasonable behaviour by local planning authorities. Only B13 and B14 concern behaviour by appellants and the unreasonable behaviour of the appellant in this case does not appear to fall within their scope. However, it is tantamount to failing to attend or be represented at an arranged Inquiry. This is an example given in paragraph B4 which can result in an award to either principal party.
16. Having regard to that advice I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. 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 Mr Larry Edmunds shall pay to Stowey Sutton Action Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparation for cross examination of the evidence of Mr Harper as set out in paragraph 14 of this decision.
18. The applicant is now invited to submit to Mr Larry Edmunds, to whose agents 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 Senior Courts Costs Office is enclosed.

Brian Cook

Inspector