The Planning Inspectorate

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Your Ref:
Our Ref: APP/Y3940/W/24/3353040

Wiltshire Council
Planning Appeals
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

17 April 2025

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Old Sarum Airfield Ltd
Site Address: Land at Old Sarum Airfield , Old Sarum, Salisbury, Wiltshire, SP4 6FW

I enclose a copy of our Inspector's decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal, you may wish to visit our "Feedback & Complaints" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our service. It would be appreciated if you could take some time to complete this short survey,

which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

Alison Dyson
Alison Dyson

https://www.gov.uk/government/publications/planning-inspectorate-privacy-notices

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - https://www.gov.uk/appeal-planning-inspectorate

Planning Inspectorate

Costs Decisions

Inquiry held between 20 February and 28 March 2025

Accompanied site visit made on 24 February 2025

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2025

Costs applications in relation to Appeal Ref: APP/Y3940/W/24/3353040
Land at Old Sarum Airfield, Old Sarum, Salisbury, Wiltshire SP4 6FW

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- Application A is made by Old Sarum Airfield Ltd (the Appellant) for a full award of costs against Wiltshire Council (the Council), on both a substantive and procedural basis.
- Application B is made by the Council for a partial award of costs against the Appellant, on a substantive basis.
- The inquiry was in connection with an appeal against the refusal of the Council for: Outline application with all matters reserved, except means of access to site, for the demolition, modification & renovation of existing buildings, structures & site development. Provision of approx. 315 residential dwellings, mixture of employment, commercial/leisure, & aviation uses, including a 'flying hub' comprising control tower, heritage centre, visitor centre, café/restaurant, parachute centre, aviation archives & aircraft hangars. Provision of new vehicular access to surrounding highways network, car parking, & connections to surrounding footpath/cycle networks. Green infrastructure provision, including open space, play space, foot & cycle paths, & landscape enhancement areas; & sustainable urban drainage system & waste water treatment works. Associated vegetation removal, ground modification & engineering works.

Decisions

1. The applications for awards of costs are both refused.

Preliminary Matters

2. 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. I have of course had recourse to the PPG text setting out non-exhaustive examples of behaviour that may give rise to procedural or substantive awards against both appellants and local planning authorities.

3. The timetable for submission of the cost applications documents was agreed on the last sitting day of the Inquiry, Friday 7 March, as follows: initial submissions on 7 March, rebuttals/responses by 14 March, and final comments by 21 March. This procedure was adhered to by both parties.

Application A: By the Appellant against the Council

The Appellant's Case

4. The application in essence summarises why the appellant considers the Council's case at appeal in terms of the three main issues of highways, viability and heritage

to be unreasonable because it was not properly substantiated. In its view, having to appeal was unreasonable (and gave rise to wasted expense) because it should have been unnecessary as the proposed development clearly complied with policy in the development plan and the NPPF, such that the application should have been granted rather than refused by the Council.

5. It also considers that the fourth and fifth refusal reasons in the decision notice (noise from the firing range and air quality on the London Road AQMA) sought to unreasonably bolster its case, because they swiftly fell away following the appeal commencing.

The Council's Response

6. In respect of the latter point, the Council says that the appeal was made after reasons 4 & 5 were resolved to the satisfaction of the public health officers. In any case, the fact these reasons fell away simply demonstrates the Council's reasonableness to agree issues that the Inquiry was not required to resolve.

7. Just as the appellant decided to regurgitate its case at appeal in its costs application, the Council has responded by restating its own case, pointing out that some time has passed since the last appeal and the Council's case has unsurprisingly evolved and evidence was presented to fully support its case.

8. Regarding the appellant's former point, given the Council's substantive detailed evidence on the three main issues in the Inquiry, it is inevitable that the Inquiry had to take place and so consequently the appellant has not wasted any costs.

9. The Council adds that the appellant's grounds for costs traduces the integrity and professionalism of its witnesses, is itself unreasonable and therefore itself represents unreasonable behaviour.

Reasons

10. A costs application is not the forum for the appellant, or indeed the Council, to re-rehearse its case at the Inquiry. That was the purpose of the Inquiry itself. I understand the appellant felt that the Council's case lacked substance and, to quote a much-used adjective by Mr Young during the Inquiry, often ludicrous.

11. However, whether ludicrous or not, the Council's case was nonetheless substantive and was argued by the submission of detailed evidence by its three professional witnesses. I had to address the Council's case in my reasoning in the appeal decision, which required several pages of explanation. I hope my conclusions on each of the main issues are self-explanatory. Although I sided with the appellant on the highways and heritage issues, I had to carefully address the Council's case in relation to them.

12. In terms of the viability issue, I can appreciate that the appellant feels aggrieved that the Council's witness changed her Benchmark Land Value (BLV) at a late stage in the appeal process without any explanation why. I agree that this could in principle have been done earlier (assuming Mrs Reed was available between the submission of the appeal on 2 October and this date, a period of two whole months), for instance sometime before the Council submitted its Statement of Case on 2 December. If that had been done, Mr Evans would have been able to counter Mrs Reed's £5M BLV in his own Proof, rather than have to do so in his subsequent Rebuttal Proof.

13. I agree that Mrs Reed not doing so until her Proof on 24 January, and not even indicating that this was likely until her letter of 22 December, was unreasonable behaviour by the Council because it should have been done earlier. But changing the BLV to £5M was not in itself unreasonable, given that Mrs Reed had consistently argued in her earlier Reports that she did not agree with the Council's acceptance of a £10.74M BLV; indeed, I agree with her change, as I make clear in my decision. The appellant criticises this change but its own witness, Mr Evans, subsequently changed several of the inputs in the viability equation figures himself.

14. I conclude from this that it was inevitable, albeit inconveniently late, particularly for me, that viability in the way it was argued by both parties at the Inquiry, would have had to be addressed at the Inquiry. So, although the Council addressed the change to the BLV figure unreasonably late in the proceedings, this issue nonetheless would always have had to be addressed – and so there has been no wasted expense by the appellant.

15. For all these reasons, its cost application fails.

Application B: By the Council against the Appellant

The Council's Case

16. This is on the basis of seven grounds:

    1. The appellant's failure, contrary to the NPPF & PPG, to engage in constructive dialogue including pre-application discussions with the Council.

    2. Insubstantive case regarding viability, which does not meet national and local policy, nor guidance or law.

    3. Unreasonable lack of evidence from the appellant company including Mr Hodge.

    4. No explanation for the deterioration of Hanger 3.

    5. Attempted reneging by appellant to 25% affordable housing commitment in S106 and claim that any permission with such a requirement would be unimplementable due to viability.

    6. Failure of appellant's advocate to respect agreed time estimate for Inquiry length.

    7. Persistent introduction of new information including plans and unreasonable pursuance and then subsequent abandonment of appellant's TRO case.

The Appellant's Response

17. The Appellant replies as follows:

    1. Although encouraged, there is no requirement for such dialogue or pre-app discussions and, in any case, the long planning history including previous appeal and High Court judgement made the issues to be resolved very clear, including heritage which was resolved with Historic England.

    2. Mr Evans responded very reasonably and professionally to Mrs Reed's adoption of a new BLV figure of £5M and the Council has acted in bad faith.

3. It is up to the appellant to decide which witnesses it decided to put forward, in light of the main issues identified as being in contention at the Inquiry.

4. Hanger 3 has not been deliberately neglected or damaged, as explained in evidence. The Council did not present any counter evidence. The proposed development would allow for its restoration/rebuilding, which is uncontested.

5. The appellant's position is that 25% affordable housing would make the scheme unviable and therefore undeliverable.

6. Mr Mohamed has also taken much longer than his suggested timings, as sometimes happens in Inquiries, and so the Council is simply being hypocritical.

7. The appellant introduced relatively few new documents at the Inquiry, mostly in direct response to the Council's highways witness, which was entirely reasonable. The appellant was prepared to discuss with the Council about the costs of further extending the TRO, but because the Council's costs for such were unreasonably high it decided to revert to its substantive view that a TRO was in any case unnecessary in that the 30mph restriction did not need extending at all.

18. It also points out that none of the Council's grounds evidences any wasted or unnecessary expense.

Reasons

19. I agree with all the Appellant's above rebuttal responses in the sense that none of its behaviour has been unreasonable and so clearly there have been no wasted costs by the Council, which was always going to have had to defend its refusal reasons at the Inquiry.

20. The Appellant's comments in its own costs application traducing the integrity and professionalism of the Council's witnesses are unfortunate and in my view unnecessary and possibly unreasonable in as much as the worth of the Council's evidence is a matter for the appeal decision rather than the costs applications or decisions. As I explain above, I had to assess the evidence produced by the Council's witnesses as part of my appeal decision and the appellant was obliged to provide its own evidence on all the main issues, which I also had to assess, so there has clearly been no wasted expense by either party.

Conclusions

21. In both applications therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and no awards of costs are warranted.

Nick Fagan

INSPECTOR