
COSTS APPLICATION ON BEHALF OF THE LOCAL PLANNING AUTHORITY

The application for a full award of costs.

1. The appellant's appeal was unreasonable. There was no reasonable basis for bringing the appeal and no real prospect of success. As a result, there is a clear basis for making this application under the terms of the PPG which states that "An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding". An example of this is where the development is "the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence"¹.
2. This application is based specifically upon the Appellant's case on the industrial land and waste issues. Each is dealt with in turn and can be addressed shortly.
3. The Appellant's waste case was based upon an unreasonable interpretation of the compensation provisions within the London Plan and the WLWP.
4. The Appellant considered that it could satisfy policy WLWP2's compensatory provision by way of hazardous waste treatment as a general type, as opposed to the actual type of processing on the site, with no real foundation and without any real prospect of success; the policy was clear for the reasons set out in the Council's closing submissions. There was no basis for relying upon the Council's officer's statement in an email (again, see the closing submissions) given that it was simply

¹ Paragraph: 053 Reference ID: 16-053-20140306

not reflective of the development plan policy and given the terms of the Officer's Report and the Statement of Case which, as Mr Mehegan accepted, could be read in accordance with the case presented by the Council in its evidence. At best, if the Appellant laboured under an ambiguity, it should have discussed the situation with the Council, but it did nothing.

5. Further, the Appellant relied upon compensatory provision outside the WLWP area (irrespective of the last point) which was wholly unjustified and completely contrary to policy. On this point alone, given this faulty approach to the policy – without a reasonable basis - it had no proper basis for contending that policy WLWP2 was complied with.
6. As a separate point, the Appellant's industrial case was also based upon a misunderstanding of policy. First, the case on the local plan was fundamentally misconceived. The argument to avoid a conflict of policy LP42 rested entirely on the contention that it was possible to move from existing uses to other uses under Class E. But the policy is plainly looking at the current position on the site in question, not some alleged potential future position – the appellant's argument had no reasonable basis. The fall back itself as a material consideration had no reasonable basis either: there was no reasonably adequate evidence at all of the potential to change to non-industrial uses and the appellant gave none. Mr Villars accepted that he was not able to give market evidence on this point.
7. The Appellant's reliance on PVLIP industrial policy had no reasonable basis. The Appellant's case relied on a reading of E7 by which industrial land use could be intensified despite a substantial reduction in the industrial land in question. The policy simply does not allow for such a reading. Even if it did, the Appellant would have had to comply with policy E2 but it entirely failed to establish that. In these circumstances, the argument on improved employment density was irrelevant. But even if there was some arguable basis for using this factor, no reasonable case was made to establish that there was a meaningful basis from the existing position for the reasons set out in the Closing Submissions; there was simply no adequate evidence presented to justify the contention being made.
8. There is clearly a 5-year housing land supply (and the Appellant's objection on this point was very late in coming forward) and the provision of affordable housing was only policy compliant. None of the benefits, including the use of brownfield land

and the alleged economic benefits of the scheme could reasonably be regarded as being able to overcome the clear contraventions of policy.

Application for a partial award of costs

9. Alternatively, a partial award is sought, on two bases:
 - 9.1. In respect of costs incurred in dealing with affordable housing issues.
 - 9.2. In respect of costs incurred in dealing with traffic issues.
10. In respect of affordable housing, had the section 106 offer been made at an earlier stage, with justification by the Appellant's advisers at that stage, the Council would not have needed to produce a proof of evidence on this issue.
11. The guidance is clear that the Appellant's entire case, including necessarily its proposed obligations where these are sought to overcome the reasons for refusal, are produced at the commencement of the appeal². Further, the PPG states that a procedural award may be made in the following circumstances, each of which is pertinent to this case:
 - "delay in providing information or other failure to adhere to deadlines
 - only supplying relevant information at appeal when it was requested, but not provided, at application stage
 - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen".

² See Annex J of the Inspectorate's procedural guide to planning appeals, paragraphs J.2.2. and J.2.3:

J.2.2 It is the appellant's responsibility to ensure that, at the time they make their appeal they are able to provide full disclosure of the details of their case and the arguments being put forward. This will ensure:

- *that we will be able to make an informed decision on the appeal procedure; and*
- *all other parties (including interested people) viewing the appeal documents will be fully aware of the nature of your case and arguments and issues from the start.*

J.2.3 The appellant's full statement of case:

- *must contain full details of relevant facts and planning/ legal arguments;*
- *must contain all available evidence;*
- *must be accompanied by all documents (including for example data, analysis or copies of legal cases) maps and plans and any relevant extracts to which the statement refers.*

...

- *should contain any policies or other documents not referred to by the local planning authority in their decision but considered to support an appellant's case; ...*

12. The Council had to wait (in spite of raising the need for affordable housing information at the CMC stage) until just before the inquiry before receiving the information it needed to resolve the affordable housing issue.
13. In respect of traffic issues, the same point is made; had the relevant information associated with the s 106 obligation and the revised layout plan been made available at the time of the appeal grounds, the Council would not have been required to produce its transportation evidence.
14. It was procedurally unreasonable to leave matters until such a late stage.

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