

RE: LAND AT HATFIELD AERODROME

PLANNING APPEAL

COSTS APPLICATION

INTRODUCTION

1. By a Notice of Intention to Make a Costs Application dated 17th June 2024, the Appellant gave notice of an intention to make an application for costs. That Notice accompanied the appeal form. It is an application made against Hertfordshire County Council ('HCC').
2. The Appellant confirms that intention and sets out its grounds for an award.
3. The application is for a full award of costs; alternatively a partial award of costs.
4. The application is made on the basis that the refusal of planning permission was unreasonable.

GUIDANCE

5. In England, the objectives of the costs regime are set out in the NPPG:

‘Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage LPAs to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.’

6. This reflects the principle that the planning system should not prevent, inhibit or delay development which could reasonably be permitted. It is a concept which is carried forward and indeed strengthened in current national policy: see paras 11c and 11d of the Framework¹. See further, paragraph 38 of the Framework.

7. The Guidance addresses the type of behaviour which may give rise to a

¹ <https://gov.uk/guidance/national-planning-policy-framework>.

substantive award against a local planning authority, thus²:

“Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
- acting contrary to, or not following, well-established case law.

.....

- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

(This list is not exhaustive.)”

² Paragraph: 049 Reference ID: 16-049-20140306; Revision date: 06 03 2014

GROUNDNS

14. HCC has put itself, the appellant, the Inspector and the appeal system in a position in which an application which it now agrees should receive planning permission, has to be dealt with on appeal. The unreasonableness of that is patent.
15. HCC was not able to find witnesses to support its reasons for refusal. It refused planning permission for reasons which were not supportable. The guidance set out at paragraph 8 above is well known and is relied upon here.
16. This is not a marginal position. This was highlighted in the appellant's Notice of Intention in June 2024 by the example of the continued reliance on groundwater contamination as a reason for refusal. It was clearly untenable in the light of:
 - a. Positive officer's reports (x 3)
 - b. The Environment Agency's agreement to the scheme measures
 - c. The statutory water undertaker's agreement to the scheme measures
 - d. HCC's own expert agreement to the scheme measures
 - e. The findings of the Inspector on this issue in 2021.
17. Conditions can obviously address many of the potential impacts. There may be a debate about the terms of the conditions, but refusal is not a realistic option for many topic areas. To fail to heed advice from professional officers who have been occupied with the scheme proposal for many years, without cogent reason, is unreasonable.
18. The extent of engagement with HCC and interested parties has been remarkable as to both the period over which it has taken place and the detail of that engagement. It

is unreasonable to reject the consensus on the design of the scheme for unsupportable reasons, without evidence.

19. Having refused the application unreasonably, HCC did nothing to correct the position until the first CMC. By that stage, the Appellant had prepared itself to address eight reasons for refusal, appointed witnesses, drafted common ground, settled draft proofs, instructed solicitors and counsel and booked accommodation for three weeks.
20. HCC has failed to perform its function as a mineral planning authority. It is implacably opposed to development which forms a part of its development plan and for which there is demonstrable need.

CONCLUSION

21. The situation in which HCC now finds itself is inexplicable. HCC can provide no proper answer to the application and a full award of costs should be made.

RICHARD KIMBLIN KC

ODETTE CHALABY

5th November 2024